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## Encroaching on Land and Livelihoods

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# ENCROACHING ON LAND AND LIVELIHOODS: HOW NATIONAL EXPROPRIATION LAWS MEASURE UP AGAINST INTERNATIONAL STANDARDS

NICHOLAS K. TAGLIARINO

## EXECUTIVE SUMMARY

As a broad legal power enabling governments to take land and resources from citizens for public purposes, expropriation can help governments serve public needs. However, expropriation can also trigger land disputes and threaten the wellbeing of the people who rely on the land for their livelihood. When misused to benefit exclusively private interests, expropriation can line the pockets of corrupt officials and private companies, without any benefit to the public. When expropriation decisions are made behind closed doors, the risks to land rights and livelihoods may intensify.

Even when expropriation is used for a genuine public purpose, compensation and resettlement measures may reduce the living standards of affected landholders, particularly the poor and vulnerable who depend on their lands for food, income, cultural identities, and other basic needs. The ripples caused by expropriations can be far-reaching: insufficient compensation and resettlement assistance hampers the ability of affected landholders to purchase or relocate to alternative land, leaving them homeless and without income. Without a home or income, affected populations may fall into poverty, suffer health problems, or endure other consequences of displacement, such as lost community structures and unraveling of the social fabric.

Recognizing a need for established international norms governing land tenure, the UN Committee on World Food Security, in 2012, endorsed a set of voluntary principles

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*Working Papers contain preliminary research, analysis, findings, and recommendations. They are circulated to stimulate timely discussion and critical feedback and to influence ongoing debate on emerging issues. Most working papers are eventually published in another form and their content may be revised.*

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known as the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security (VGGTs). The VGGTs establish best practices that “are backed by international consensus of governments, international NGOs, civil society, and the private sector.”<sup>1</sup> Section 16 of the VGGTs establishes standards on expropriation, compensation, and resettlement.

## Assessing National Expropriation Laws in Africa and Asia

*Encroaching on Lands and Livelihoods* considers whether national expropriation laws in 30 countries across Asia and Africa follow the international standards established in Section 16 of the VGGTs. It analyzes laws against a set of 24 indicators (hereinafter “expropriation indicators”) based on the standards established in Section 16 and

### Box ES-1 | Highlights from Section 16 of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security

**Section 16.1:** “States should expropriate only where rights to land . . . are required for a public purpose. States should clearly define the concept of public purpose in law, in order to allow for judicial review.”

**Section 16.1:** “[States should acquire only] the minimum resources necessary.”

**Section 16.1:** “[States] should respect all legitimate tenure rights holders, especially vulnerable and marginalized groups, by . . . providing just compensation in accordance with national law.”

**Section 16.2:** “States should be sensitive where proposed expropriations involve areas of particular cultural, religious or environmental significance, or where the land . . . [is] particularly important to the livelihoods of the poor or vulnerable.”

**Section 16.2:** “States should ensure that the planning and process for expropriation are transparent and participatory. Anyone likely to be affected should be identified, and properly informed and consulted at all stages.”

**Section 16.3:** “States should ensure a fair valuation and prompt compensation . . . Among other forms, the compensation may be, for example, in cash, rights to alternative areas, or a combination.”

**Section 16.5:** “Where the land . . . [is] not needed due to changes of plans, States should give the original rights holders the first opportunity to re-acquire these resources.”

**Section 16.6:** “All parties should endeavor to prevent corruption, particularly through use of objectively assessed values, transparent and decentralized processes and services, and a right to appeal.”

**Section 16.8:** “States should, prior to eviction or shift in land use which could result in depriving individuals and communities from access to their productive resources, explore feasible alternatives in consultation with the affected parties . . . with a view of avoiding, or at least minimizing, the need to resort to evictions.”

**Sec. 16.9:** “States should, to the extent that resources permit, take appropriate measures to provide adequate alternative housing, resettlement or access to productive land.”

provides examples of expropriation practices drawn from literature reviews to illustrate the importance of adopting international standards. Based on this analysis, the paper offers a set of recommendations that identifies steps that governments, civil societies, and other stakeholders can take to adopt international standards on expropriation, compensation, and resettlement.

The 24 expropriation indicators are designed to align with the principles established in Section 16 of the VGGTs. They ask yes or no questions about the legal provisions established in expropriation laws. (“Partial” is an answer option where laws only partially satisfy the question asked by the indicator.) Answering the questions posed by these indicators entailed reviewing a broad range of legally binding instruments, including national constitutions, land acquisition acts, land acts, communal land acts, agricultural land acts, land use acts, regulations, and court decisions.

## Key Findings

Assessing domestic expropriation laws in 30 countries against the standards set by Section 16 of the VGGTs reveals that:

- Only four of the 30 countries clearly define “public purpose,” thereby easing judicial review.
- Of the 30 countries, India and Taiwan are the only countries with laws that limit the amount and types of lands that governments can acquire.
- Of the 30 countries, only India, Vietnam, and Indonesia have laws that require governments to survey, inform, and consult affected populations prior to expropriation.
- Only six of the 30 countries have laws that make strides toward respecting legitimate tenure rights by ensuring customary tenure holders and users of undeveloped areas are entitled to compensation.
- None of the 30 countries have laws ensuring that the government will conduct a comprehensive\* and gender-sensitive valuation of compensation consistent with the VGGTs. Although India’s Right

to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 partially addresses gender issues, the remaining countries have laws that establish gender-neutral compensation procedures, meaning they are silent on whether compensation must reflect the differing ways in which women and men hold and use their lands and resources. Especially in societies with patriarchal land governance systems, gender-neutral laws may ensure that compensation is paid only to the male heads of households, leaving women disproportionately burdened by land acquisitions. Additionally, almost all of the laws assessed do not ensure that compensation will adequately reflect the historical and cultural connections associated with the land.

- Eight of the 30 countries have laws that provide for prompt payment of compensation, a right to negotiate compensation amounts, and a right to challenge compensation decisions before courts and tribunals.
- Of the 30 countries, only India has a law providing robust rehabilitation and resettlement procedures.

## Recommendations

The majority of countries assessed do not have expropriation laws that are consistent with the international standards established in Section 16 of the VGGTs. To harmonize national laws with international standards, expropriation laws should be reformed to:

1. **Provide a clear conceptualization of public purpose to allow for judicial review.** In accordance with Section 16.1 of the VGGTs, laws should provide a clearly defined list of public purposes to give courts guidance when determining whether proposed expropriation decisions serve genuine public purposes. Laws should subject government decisions to independent and impartial oversight by judiciaries to ensure proper checks and balances, and prevent executive and legislative branches from abusing or misusing expropriation power.

\*“Comprehensive” as used here means accounting for the following land value attributes: economic activities, improvements, and historical/cultural connections associated with the land. Additionally, “comprehensive” refers to procedures that provide alternative land as a compensation option.

2. **Limit the amount and types of land that governments can expropriate.** Governments should consider adopting laws that obligate them to conduct and publish a cost-benefit analysis before expropriating lands, whereby the government weighs the costs borne by the affected populations and the environment against potential public benefits. Using this cost-benefit analysis, governments should consider conducting a “proportionality test”<sup>2</sup> for proposed expropriation projects. This test would determine whether the expropriation project is *necessary* to serve a public purpose, whether the project is *suitable*, and whether the benefits deriving from the expropriation are *proportionate* to costs borne by affected populations and the environment.
3. **Establish transparent and participatory processes for expropriating land.** To conform to Section 16.2 of the VGGTs, governments should be legally obligated to survey, inform, and consult affected populations in an open and participatory manner prior to taking possession of expropriated land. By surveying affected populations, governments can determine who is entitled to compensation and understand the impact of the expropriation on livelihoods. Providing information on expropriation plans to these populations can be an effective first step toward ensuring that these populations are able to participate meaningfully in expropriation decision-making and other processes (e.g., compensation processes, resettlement processes).
4. **Respect legitimate tenure rights by ensuring that customary tenure rights holders and users of undeveloped areas are compensated when their lands are expropriated.** To ensure that tenure rights are respected, governments should be required to compensate all affected populations, including unregistered customary tenure rights holders and users of pastures and other undeveloped areas.
5. **Ensure that governments follow a comprehensive and gender-sensitive approach to compensating affected populations.** Governments should be required to follow a gender-sensitive approach to providing compensation that accounts for the losses borne by women and men due to expropriation. For compensation to comprehensively reflect the losses borne by the tenure

rights holders, payments should reflect the land’s historical and cultural value, in addition to economic activities and improvements associated with the land. Additionally, states should be legally obligated to pay compensation to affected populations prior to taking possession of the expropriated land and to ensure that affected landholders can negotiate compensation amounts and appeal compensation decisions before courts or tribunals.

6. **Minimize forced evictions and, if evictions are unavoidable, provide displaced persons with a relocation allowance, alternative housing and/or access to productive alternative land.** Governments should be legally required to avoid or minimize forced evictions. When forced evictions are unavoidable, the government should be legally obligated to consult displaced persons and provide them with a relocation allowance and alternative land to ensure that they are not at risk of poverty or otherwise harmed. Lawmakers should look to India’s Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act of 2013 as a model when drafting resettlement procedures.

## 1. INTRODUCTION

In almost all countries, governments can acquire—or “expropriate”—privately held land for a public purpose as long as affected populations are compensated (see Box 1 for definitions of terms). Expropriation for genuine public purposes can promote public benefits by allowing the government to acquire land for developing roads, dams, and schools; designating protected areas; and other public purposes.

In some countries, however, governments transfer acquired land to private companies, often for the purpose of extracting natural resources for export. These expropriations are usually justified as serving public needs by increasing public revenues, creating jobs, and otherwise stimulating economic growth. In China, Tanzania, and other countries, the use of expropriations for commercial purposes has increased dramatically in recent years (see Box 2).<sup>3</sup> Over 3.15 million hectares of farmland in China were expropriated (more than 2 percent of China’s total arable land) between 1990 and 2002, which caused roughly 36.4 million farmers to lose their land.<sup>4</sup> Much of this land was expropriated for commercial interests.<sup>5</sup>

## Box 1 | Definition of Terms

**Acquiring bodies** are the government and private entities that carry out the expropriation, compensation, and resettlement processes, including government departments, ministries, and agencies or, in some cases, private entities, such as companies investing in land (FAO 2008).

**Affected populations** are the individuals or groups whose tenure rights are affected by expropriations.

**Compensation** is the payment, in cash or in kind, made by governments or acquiring bodies to affected populations for expropriation of their tenure rights.

**Displaced persons** are the affected populations forced to vacate their land as a result of expropriation.

**Expropriation** is the power of government to acquire privately held tenure rights, without the willing consent of the tenure holder, in order to benefit society (FAO 2008). In this working paper, “expropriation” refers to eminent domain, takings, compulsory purchase, compulsory acquisition, and other names given to this government power around the world.

**Expropriation laws** refer to a broad range of legally binding instruments, including national constitutions, land acquisition acts, land acts, communal land acts, agricultural land acts, land use acts, regulations, and court decisions.

**Land tenure** is the statutory or customarily defined relationship among people—as individuals or groups—with respect to land. It includes the full range of relationships between people and communities with regard to accessing, possessing, and controlling land and natural resources (FAO 2002).

**Land tenure security** is the certainty that the rights to land held by an individual or community will be recognized by others and protected in cases of challenges (FAO 2002). This term is further defined as (a) the degree of confidence that land users will not be arbitrarily deprived of the rights they enjoy over land and the economic benefits that flow from it and (b) the right of individuals and groups to effective government protection against forced evictions (UN-Habitat 2008).

**Land tenure risks** are the factors that create land tenure insecurity. They include, but are not limited to, overlapping claims to the same parcel of land, lack of clarity over who owns the land, non-transparent land governance systems, different systems and institutions allocating and enforcing tenure rights, violations of the rights of vulnerable groups, corruption in the system that allocates and enforces tenure rights, and other risks (USAID 2015).

**Land governance** is the system of rules, processes, and structures through which decisions are made about access to land and its use (Palmer et al. 2009). Land can be governed under statutory or customary systems.

**Landholders** are the individuals or groups that hold tenure rights.

**Tenure rights** are the rights of individuals or groups, including Indigenous Peoples and communities, over land and resources. Tenure rights include, but are not limited to, possession rights, use rights, and rental, freehold, customary, and collective tenure arrangements. The bundle of tenure rights can include the rights of access, withdrawal, management, exclusion, and alienation.

## Box 2 | Examples of Expropriations for Private Interests

In **Tanzania**, according to a World Bank study, expropriated rural land is routinely transferred to private actors.<sup>6</sup> The government often justifies these expropriations as serving the public purposes of “rational town planning” or “productive rural investment.” According to the study, expropriations were perceived by the public as aiming to push out poor and indigenous landowners to allow the rich or the state to derive major benefits.<sup>7</sup>

In **China**, a survey of 467 expropriations in 2002–2003 found that nearly half of these expropriations were for commercial purposes, such as factories and real estate development.<sup>8</sup>



The abuse or misuse of expropriation power can pose significant risks to land tenure security, human rights, and livelihoods. For example, the government might arbitrarily justify the expropriation of land, or justify expropriation under the pretext of serving a public purpose, when the proposed expropriation is not actually intended to serve a public purpose. Or the government might expropriate land citing an “economic development” purpose, and then transfer the land to an extractive industry that will not actually support local economic growth or otherwise serve public interests. In these circumstances, expropriations may not only fail to provide a public benefit, but may also jeopardize affected populations, including Indigenous Peoples and local communities, who depend on their land for basic needs, livelihoods, and cultural identities.

Even when land is expropriated for legitimate public purposes, compensation procedures can negatively impact affected populations. When compensation is made conditional on formal legal title, affected populations without formal land rights, such as communities with customary tenure rights and informal occupants of urban areas, may be vulnerable to expropriation without compensation. Customary tenure holders are particularly vulnerable when laws recognize them only as informal occupants or users of government-owned land.<sup>9</sup>

Without laws that require a comprehensive\* calculation of compensation, affected populations may fall into poverty or be worse off than before their land was expropriated.<sup>10</sup> The monetary compensation provided to affected populations may be insufficient to cover their losses or, if compensation is payable in alternative land, the alternative land may be uncultivable or degraded. A recent study in Rwanda found that 77 percent of expropriated households surveyed experienced income loss after their land was expropriated.<sup>11</sup> Likewise, more than 50 percent of affected farmers surveyed in China reported that expropriation caused a reduction in their standard of living.<sup>12</sup>

If governments are not legally obligated to consult affected populations, they may make expropriation decisions behind closed doors without allowing affected populations to participate meaningfully in the decision. In many

countries, governments often do not make information about their use of expropriation available to the public.<sup>13</sup> In Ethiopia, for example, “there is no tradition of consultation with rural communities. . . Peasants are almost always the last to know . . . and they are informed only when implementation is to be undertaken.”<sup>14</sup>

When expropriations lead to forced evictions, weak resettlement processes can render displaced persons landless and subject to significant poverty, health, and other risks.<sup>15</sup> Displaced persons without evidence of formal land rights may be particularly harmed by evictions if laws grant resettlement benefits only to formally recognized tenure holders. In fact, a principal difference between the World Bank’s resettlement policies and country legal systems for accommodating displaced persons often “centers on the treatment of people who live on or use land without legal ownership.”<sup>16</sup> Additionally, in India and other countries where displaced persons are usually not consulted during the resettlement process, inability to participate and monitor the resettlement process can lead to protests and resistance among affected populations.<sup>17</sup> These conflicts may delay projects and increase costs for governments and acquiring bodies.<sup>18</sup>

## **The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security**

The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security (VGGTs) are the first comprehensive global instrument on governance of tenure. They establish best practices that “are backed by international consensus of governments, international NGOs, civil society, and the private sector.”<sup>19</sup> The VGGTs were prepared through extensive intergovernmental negotiations launched in 2009 by the Food and Agriculture Organization of the United Nations (FAO).<sup>20</sup> Ten regional consultations with stakeholders brought together nearly 700 people from the public and private sectors, civil society, and academia, representing 133 countries, to ascertain and address tenure governance concerns.<sup>21</sup> In 2012, the United Nations Committee on World Food Security, a body with 193 member countries, endorsed the VGGTs.

\* “Comprehensive” is used here to mean accounting for the following land value attributes: economic activities, improvements, and historical/cultural connections associated with the land. Additionally, “comprehensive” refers to procedures that provide alternative land as a compensation option.

While the VGGTs are not legally binding, they work in conjunction with other international human rights instruments, such as International Labour Organization Convention 169 and the UN Declaration on the Rights of Indigenous Peoples, to ensure that tenure rights are respected when state and non-state actors engage in activities that affect land. The VGGTs also reflect inalienable international human rights, such as the right to property,<sup>22</sup> the rights to housing,<sup>23</sup> and the right to an adequate standard of living.<sup>24</sup> Private companies, governments, NGOs, and other stakeholders are increasingly accepting the VGGTs as a new international standard on land tenure.<sup>25</sup>

The VGGTs present a set of standards to guide governments, companies, civil society organizations, communities, and other stakeholders on the responsible governance of land tenure systems. The standards seek to improve the governance of land tenure and protect the land tenure rights of all persons, particularly vulnerable and marginalized groups.<sup>26</sup> The VGGTs cover a range of issues relating to land tenure governance, such as legal recognition and allocation of tenure rights, customary tenure systems, land redistribution, administration of tenure (i.e., recording and valuation of tenure), and other topics. Section 16 of the VGGTs establishes a set of standards or best practices for expropriating land and compensating and resettling affected populations in a manner that respects and protects their tenure rights and livelihoods.

The VGGTs contain open-ended terminology that is intentionally left undefined to provide flexibility to states when interpreting its provisions. For example, the VGGTs call for states to respect “all legitimate tenure rights holders,” but do not define the term “legitimate tenure.” For guidance on interpreting the VGGTs and insight into the importance of adopting international standards on expropriation, this working paper draws on the Food and Agricultural Organization of the United Nations (FAO) publication, *Land Tenure Studies 10: Compulsory acquisition of land and compensation* (FAO Handbook), published in 2008, which presents good practices for conducting compulsory acquisitions and compensating affected populations. Although the FAO Handbook is not officially endorsed by the international community, it reflects what FAO and its many international collaborators consider to be good practices for ensuring equitable access to land and increasing land tenure security.<sup>27</sup>

The legal analysis in this paper is based on the VGGTs because they are the first comprehensive, internationally agreed-upon standards on land tenure governance. There are, however, other international instruments that establish standards on expropriation and involuntary resettlement. For instance, International Finance Corporation (IFC) Performance Standards 5 and 7, the World Bank’s 2001 Operational Policy on Involuntary Resettlement (O.P. 4.12), the Asian Development Bank Handbook on Resettlement, and the UN Human Rights Commission Principles and Guidelines on Development-based Evictions and Displacement establish best practices for expropriating, compensation, and resettlement.<sup>28</sup> Several of the standards established in these instruments are similar to those established in the VGGTs.

## Scope of this Paper

This working paper compares expropriation laws in 30 countries against the standards established in Section 16 of the VGGTs.<sup>29</sup> These 30 countries are:

### Asia

1. Afghanistan
2. Bangladesh
3. Cambodia
4. China
5. Hong Kong
6. India
7. Indonesia
8. Kazakhstan
9. Malaysia
10. Mongolia
11. Philippines
12. Sri Lanka
13. Taiwan
14. Thailand
15. Vietnam

### Africa

1. Botswana
2. Burkina Faso
3. Ethiopia
4. Ghana
5. Kenya
6. Liberia
7. Namibia
8. Nigeria
9. Rwanda
10. South Africa
11. South Sudan
12. Tanzania
13. Uganda
14. Zambia
15. Zimbabwe



The countries were chosen to cover a broad geographical area in Africa and Asia. Because WRI's Land and Resource Rights Initiative focuses on securing the tenure rights of Indigenous Peoples and local communities, countries were selected based on whether there is a significant amount of land held by indigenous and local communities, and whether WRI's local partners may be well positioned to advocate for legal reforms. This study will be expanded to include more countries, particularly countries in Latin America.<sup>30</sup>

The paper focuses on laws for four reasons. First, laws establish how land governance systems should operate. Second, laws provide citizens with a set of rights and protections. Third, laws establish the obligations of governments and private actors. Fourth, laws serve as a point of reference when the public wishes to challenge government and private actor decisions that violate tenure rights.

### Who can Benefit from this Research?

This paper establishes a benchmark for progress that can assist civil society organizations, non-governmental organizations (NGOs), policymakers, lawmakers, advocates, landholders, investors, and others in measuring government progress toward adopting international standards on expropriation, compensation, and resettlement in domestic laws.

Affected populations and land rights advocates can use this analysis to better understand their tenure

rights, including whether their lands are vulnerable to expropriation without adequate compensation. With increased knowledge on domestic expropriation laws and the VGGTs, affected populations and advocacy groups can hold governments and private actors accountable for decisions affecting land.

This paper can also support companies in aligning their operations with Sec. 16 of the VGGTs. The Interlaken Group, USAID, and Landesa recently developed operational guidelines to help private companies address land tenure risks by aligning their operations with the VGGTs, but these guidelines do not focus specifically on Section 16 of the VGGTs.<sup>31</sup> In conjunction with those guidelines, this paper can support companies engaging in activities that involve expropriation, compensation, and resettlement. Companies can use this paper to understand the domestic legal frameworks of the countries in which they make land investments and implement activities that require access to land, so they can make sound business decisions. This paper may also help companies meet corporate social responsibility objectives and industry-specific commitments, such as commitments to transparency, responsible investment, and compliance with applicable laws. Box 3 provides a discussion of the relationship between domestic expropriation laws and the World Bank Environmental and Social Safeguards.

There are nine parts to this paper. Following this introduction (part 1), the research methodology is presented in part 2. Parts 3–7 are organized by the subject matters of the expropriation indicators, and each subject matter links

### Box 3 | Connections between National Expropriation Laws and the World Bank Environmental and Social Safeguards

This paper considers the domestic legal protections in national laws for populations affected by expropriation. However, not all development projects are required to follow such laws. Borrowers of World Bank funding, for example, are usually obliged instead to follow the World Bank Environmental and Social Safeguards. In July 2015, the World Bank published a second draft of its revised Environmental and Social Framework for consultation.<sup>32</sup> Consultations on the second draft concluded in March 2016, and the final Framework could be published later this year. The Framework establishes environmental and social standards (ESS) for borrowers of World Bank funding to assess, manage, and monitor environmental and social risks and impacts associated with projects supported by the World Bank. ESS 5 (Land Acquisition, Restrictions on Land Use and Involuntary Resettlement) and ESS 7 (Indigenous Peoples) must be followed when World Bank-funded projects involve expropriation and resettlement.<sup>33</sup> However, there are exceptions that allow for domestic laws to apply in some cases.<sup>34</sup> For instance, if a subproject's environmental and social risk is rated by the World Bank not as "high risk" but, rather, as "substantial risk, moderate risk, or low risk," national laws may apply.<sup>35</sup>

More importantly, many companies and banks around the world invest in projects that involve the expropriation of land, but do not borrow money from the World Bank or other institutions that have safeguard policies that override national laws when necessary to ensure that tenure rights are adequately protected. Because these companies and banks are obliged only to follow domestic laws, it is important to understand these laws' protections.

directly to relevant provisions of Section 16 of the VGGTs. Part 8 shows the findings by country and region. Part 9 provides recommendations for governments, civil society organizations, and other stakeholders working to reform national expropriation laws to ensure that tenure rights are respected and protected.

## 2. METHODOLOGY

Based on the international standards on expropriation established in Section 16 of the VGGTs, this paper sets out 24 expropriation indicators (see Box 4).

### Box 4 | Expropriation Indicators

1. Is “public purpose” clearly defined to allow for judicial review?
2. Must the government expropriate only the minimum amount of land necessary to achieve a public purpose?
3. Are areas of cultural, religious, and environmental significance given special protection?
4. Is land that is held by poor and vulnerable groups given special protection?
5. Must the government grant reacquisition rights when the land is no longer needed for a public purpose?
6. Prior to expropriation, must the government identify all affected populations?
7. Prior to expropriation, must the government inform affected populations about the acquisition plan, including the reasons for expropriation?
8. Prior to expropriation, must the government consult affected populations?
9. Are customary tenure holders with formally recognized tenure rights entitled to compensation?
10. Are customary tenure holders without formally recognized tenure rights entitled to compensation?
11. Are users of undeveloped land (land used for hunting, grazing, and other purposes) entitled to compensation?
12. Must the government follow a gender-sensitive approach to calculating compensation?
13. Must compensation reflect the economic activity associated with the land?
14. Must compensation reflect the improvements on the land?
15. Must compensation reflect the historical/cultural connections associated with the land?
16. Is compensation payable in alternative land as an alternative or in addition to cash?
17. Must compensation be afforded prior to the taking of possession or within a specified timeframe?
18. Can affected populations negotiate compensation levels?
19. Can affected populations challenge compensation in court or before a tribunal?
20. Are displaced persons legally entitled to a relocation allowance?
21. Are displaced persons granted alternative land and housing?
22. Must the alternative land granted to displaced persons be “productive” land?
23. Must the government consult displaced persons during the resettlement process?
24. Must the government avoid or minimize forced evictions?

To answer the expropriation indicators, I analyzed national expropriation laws, with initial research support from legal researchers at WRI and the Harvard Law and International Development Society (LIDS). Legal researchers at WRI and LIDS conducted the initial round of legal reviews for many of the countries in the spring of 2014. I then conducted an independent review and quality control of the LIDS's legal research in the fall of 2014. I presented preliminary findings at the 2015 World Bank Land and Poverty Conference and the 2015 Expropriation Conference at The Hague. After receiving feedback from conference participants and other scholars, I conducted a second round of legal reviews between October and December 2015.

The indicators are designed to align with the principles established in Section 16 of the VGGTs. The indicators ask yes/no questions about the legal provisions established in expropriation laws. To answer the indicator questions, the researchers and I reviewed a broad range of legally binding instruments, including national constitutions, land acquisition acts, land acts, communal land acts, agricultural land acts, land use acts, regulations, and some court decisions.

Where laws only partially satisfy the question asked by the indicator, “partial” was an answer option. For example, the question “Is ‘public purpose’ clearly defined to allow for judicial review?” (Indicator 1) was answered with “partial” in cases where there is a clear list of public purposes, but also a vague open-ended clause, such as “or any other purpose.” Similarly, the questions about public consultation requirements and compensation could be answered with “partial” when the laws require consultation only under limited circumstances or provide compensation for some, but not all, types of improvements and economic activities associated with the land. This study focuses on whether laws have explicit provisions that satisfy the questions asked by the indicators. In the absence of explicit legal provisions in constitutions, legislation, or regulations that satisfied the indicators, the indicator received a score of “no.” The study includes an assessment of court decisions available online (see Appendix B); however, because some court decisions are not available online, it does not comprehensively assess court decisions for all 30 countries. Explicit legal provisions are not always necessary for countries to adopt the VGGT principles; a court may step in and fill gaps in the law. Nevertheless, the existence of legal provisions in legislation and

regulations provides a greater degree of certainty that the VGGT standards in Section 16 will be consistently respected and enforced.

There are several important caveats regarding this paper:

- It does not comprehensively assess expropriation practices or how laws are actually implemented or enforced on the ground.
- It focuses exclusively on binding laws on expropriation, compensation, and resettlement. It does not assess non-binding policies or laws that are not in effect.
- It focuses on expropriation and does not analyze other legal mechanisms for restricting or extinguishing tenure rights or transferring land.<sup>36</sup>
- It is based on desk review of expropriation laws. Due to funding constraints, the legal analyses were not peer-reviewed by in-country lawyers.
- Its expropriation indicators focus on legal rights that are particularly important to securing rights for indigenous and local communities in rural areas, in keeping with the focus of the Land and Resource Rights Initiative.
- It focuses on national expropriation laws. It does not assess laws at the subnational level.
- Some of the laws assessed were unofficial English-translation versions of laws originally written in non-English languages. In some cases, unofficial translations may alter the original meaning and therefore the interpretation of the legal provisions assessed.
- The analysis is limited to laws that were available and accessible online. Additionally, where available, secondary sources on the legal frameworks of the laws in these 30 countries were reviewed. While the analysis is based on a broad range of legislation, regulations, and court decisions for the 30 countries assessed, there may be additional laws that are not available online and therefore not accounted for in the analysis.
- The VGGTs are subject to interpretation. The expropriation indicators were chosen based on the

interpretations provided by the FAO Handbook, which shed light on the intent and meaning of Section 16 of the VGGTs. Additional or different indicators might have been developed for inclusion in this study.

- The findings are based on the author's legal interpretations, but laws are often subject to varying interpretations. In some cases, there may be an element of subjectivity in legal interpretations.

### 3. PUBLIC PURPOSE JUSTIFICATION PROVISIONS

Section 16.1 of the VGGTs states that “States should expropriate only where rights to land . . . are required for a public purpose. States should *clearly define the concept of public purpose in law, in order to allow for judicial review.*” (Emphasis added.)

How a law defines “public purpose” is significant because, depending on the wording of the definition, it can limit the scope of government authority to expropriate land. As discussed in the FAO Handbook, clearly defined lists of public purposes in legislation provide an established inventory of permissible purposes beyond which the government may not expropriate land.<sup>37</sup> This inventory provides criteria that people can use to challenge proposed justification decisions in court. Laws with clear lists of public purposes (e.g., public infrastructure projects, national defense) provide courts with better guidance when ruling on expropriation cases and diminish the potential for conflicting court decisions. The FAO Handbook provides examples of commonly accepted public purposes:<sup>38</sup>

- Transportation uses including roads, canals, highways, railways, bridges, wharves, and airports
- Public buildings including schools, libraries, hospitals, factories, religious institutions, and public housing
- Public utilities for water, sewage, electricity, gas, communication, irrigation and drainage, dams, and reservoirs
- Public parks, playgrounds, gardens, sports facilities, and cemeteries
- National defense purposes

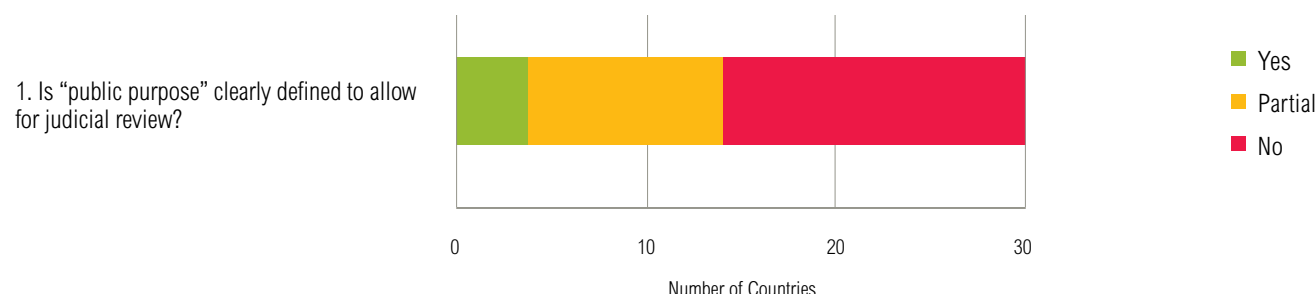
Without a clear definition of public purpose in law, executive bodies may misuse or abuse expropriation power by arbitrarily justifying an expropriation decision under the pretext of a public purpose when the actual purpose will not serve public interests. Ambiguous definitions of public purpose, or laws that grant broad discretion to executive bodies to determine what constitutes a public purpose, limit the potential for effective judicial oversight. In Ethiopia, for example, the government expropriated 100,000 hectares of farmland in Gambella for Karuturi Global, Ltd. for the proposed purpose of promoting a “better development project”—a vaguely defined term in the “public purpose” provision in Ethiopia's expropriation law.<sup>39</sup> Ultimately, the company did not fulfill its promises to create jobs, provide water to villages, and build public infrastructure.<sup>40</sup> Examples of disputes about the concept of public purpose are provided in Box 5.

#### Box 5 | Defining Public Purpose: A Contentious Issue

In many parts of the world, decision-making on expropriation is politically sensitive and a significant source of contention between governments and affected populations.

- In India, farmers protested and challenged a government decision to expropriate village land in 2011, claiming that the expropriation was unjustified because it did not serve public interests.<sup>41</sup> The Supreme Court of India ultimately ruled the expropriation illegal, on the grounds that “in the name of public interest, the [government] was serving private interests.”<sup>42</sup>
- In China, farmers organized a sit-in at a local government office after their land was expropriated for the purpose of real estate development.<sup>43</sup> The protest reportedly triggered a violent government response.<sup>44</sup>
- In South Africa, there has been significant public debate over whether expropriations are justified for the purpose of redistributing land to black populations who lost their tenure rights during Apartheid.<sup>45</sup>
- In the United States, affected populations and the public protested the 2005 Kelo Supreme Court decision, which granted the government broad discretion to justify expropriations for economic development.<sup>46</sup>

Figure 1 | **Public Purpose Justification Provisions**



## Research Findings

As shown in Figure 1, only four of the 30 countries reviewed (Cambodia, India, Indonesia, and Mongolia) have laws with clearly defined lists of public purposes, such as public infrastructure projects and national defense. These laws also indicate that governments cannot expropriate land for a purpose not explicitly included in the list.<sup>47</sup>

Ten of the 30 countries<sup>48</sup> received “partial” answers because their laws only partially define public purpose. A partially defined provision means that there is a clear list of permissible public purposes accompanied by an open-ended clause (e.g. “or other public purposes”). The open-ended clause grants governments flexibility in interpreting what constitutes “or other public purposes.” As the FAO Handbook states, partially defined lists of public

purposes can still provide courts with guidance when determining whether an executive interpretation of “any other purpose” is outside the scope of the legal definition and therefore violates the law.<sup>49</sup> Contrasting approaches to judicial review of public purpose justifications are described in Box 6.

Sixteen of the 30 countries assessed did not clearly define the concept of public purpose; these countries received red “no” scores. Of these 16 countries, six<sup>50</sup> have laws that either vaguely define public purpose or do not define public purpose, and 10 countries<sup>51</sup> explicitly grant the government broad discretion to interpret what constitutes a public purpose. According to Zambia’s Land Acquisition Act 1970, for example, the President may expropriate land “whenever he is of the opinion that it is desirable or expedient in the interests of the Republic to do so.”<sup>52</sup>

## Box 6 | **Judicial Review of Public Purpose Justification Decisions**

In countries where courts have reviewed public purpose justifications, they have often proved lenient and refused to second-guess the executive and legislative branches’ rationale for an expropriation. This is especially the case when expropriation laws explicitly grant broad discretion to interpret what constitutes a public purpose. In South Africa, for example, executive bodies must provide only a “sufficient reason” why expropriations are needed for public purposes.<sup>53</sup> Courts will often take this reason at face value and not investigate whether the proposed expropriation is actually likely to serve public interests.

In *Kelo vs. City of New London*, the U.S. Supreme Court concluded that the fact that expropriations for “economic development” benefit private parties and produce only incidental public benefits did not render the expropriation unconstitutional.<sup>54</sup> The Court refused to second-guess the legislature’s justification for the expropriation and refused to inquire whether there is “reasonable certainty” that the proposed expropriation would actually serve a public benefit.<sup>55</sup>

In contrast, some courts have taken a more active approach to reviewing justification decisions. In Sri Lanka, for example, the Supreme Court overruled a decision to expropriate land for a private golf resort in the *Water’s Edge* case (2008).<sup>56</sup> The Court made its decision despite the legislative provision stating that the Minister’s declaration that land is needed for a public purpose “shall be conclusive evidence that such land . . . is needed for a public purpose.”<sup>57</sup>



This provision opens the door for the Zambian President to abuse his or her expropriation power by arbitrarily justifying an expropriation decision under the pretext of a public purpose, when the actual purpose is not intended to serve public interests. Overall, as the FAO Handbook points out, the public and affected populations in these 16 countries may be less likely to consider arbitrary justification decisions as genuinely serving public interests, and more likely to protest such decisions.<sup>58</sup>

**Key finding:** Only four of the 30 countries assessed clearly define the concept of public purpose to allow for judicial review.

## 4. LIMITATIONS ON THE AMOUNT AND TYPES OF LAND THAT GOVERNMENTS CAN EXPROPRIATE

In Sections 16.1, 16.2, and 16.5, the VGGTs establish standards for the amount and types of land that can be expropriated.

Section 16.1 specifies that States should acquire only “the minimum resources necessary.” Although the VGGTs do not explicitly explain why governments should limit expropriation in this way, there are two justifications for this principle. First, it prevents governments from expropriating an excessive amount of land. Second, it minimizes infringements on tenure rights and livelihoods. Where expropriations are relatively low-cost compared to voluntary land transfers, governments may be incentivized to expropriate an excessive amount of land. In Ghana, for example, where the government is not legally obligated to minimize the amount of land expropriated,<sup>59</sup> the government expropriated 167 hectares of land to build a school when only 20 hectares were needed.<sup>60</sup> The FAO Handbook provides guidance on implementing the “minimum resources necessary” principle, and states, “if the creation of an easement or servitude\* can serve the purpose of the project, there is no need to acquire ownership of the land parcel.”<sup>61</sup>

Section 16.2 establishes that “States should be sensitive where proposed expropriations involve areas of particular

cultural, religious or environmental significance, or where the land . . . [is] particularly important to the livelihoods of the poor or vulnerable.” Since the determination of areas deserving special protections may vary from country to country, the VGGTs do not provide guidelines or examples of “areas of particular cultural, religious or environmental significance.” However, if governments are not sensitive to these areas, such as burial grounds and natural and cultural heritage sites, expropriations may harm the cultural identities, religious practices, environments, and livelihoods of affected populations.

Section 16.2 of the VGGTs also calls for states to be sensitive to areas held by poor and vulnerable groups. Expropriations may disproportionately burden these populations, including Indigenous Peoples and local communities, because land and resources are often their primary source of income, nutrition, and other livelihood needs.

Section 16.5 calls for states to grant reacquisition rights in the event that expropriated land is no longer needed for a public purpose. It specifies that “where the land . . . [is] not needed due to changes of plans, States should give the original rights holders the first opportunity to reacquire these resources.”

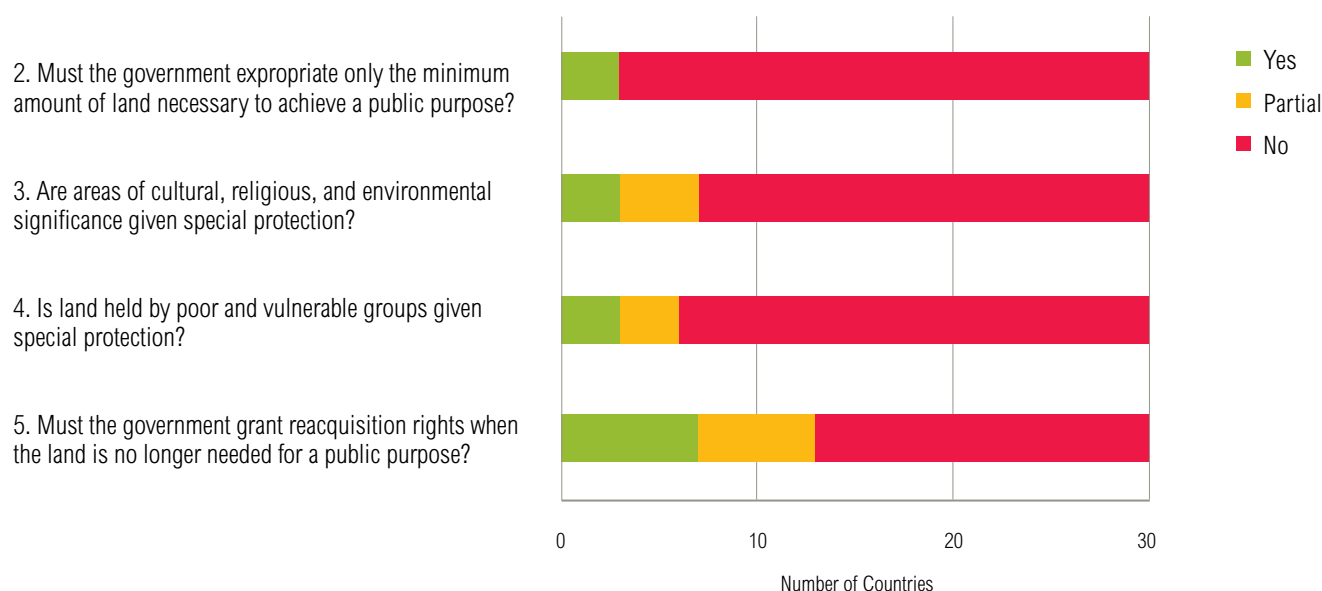
Reacquisition rights are another means of ensuring that government’s expropriate only the amount of land needed. In Bangladesh, for example, where reacquisition rights are granted only if the government approves,<sup>62</sup> a large portion of land expropriated to build the Jamuna Bridge subsequently remained unutilized.<sup>63</sup>

When expropriated land remains unutilized for a public purpose, the identity of the rightful landholders can become unclear, leading to land disputes. Reacquisition rights ensure that, in the event that a public purpose is not achieved, the land is returned to its original landholders. This way, affected populations do not suffer long-term harm from having to give up their tenure rights even when their land is not used for a public purpose.

\* “An easement or servitude is the right to use land for a specified purpose. Under this approach to expropriating land, governments require affected landholders to grant access to and use of the landholders’ property for the purpose of promoting a public benefit; governments do not necessarily acquire ownership rights or force affected populations to move off their land.



Figure 2 | **Limitations on the Amount and Types of Land Acquired (Indicators 2-5)**



## Research Findings

Findings related to limitations on the amount and types of land that governments can expropriate are shown in Figure 2.

**Minimum land:** Only three of the 30 countries assessed (India, Malaysia, Taiwan) require governments to limit the amount of land acquired to the amount necessary to achieve a public purpose.

**Cultural and other protections:** India's Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act of 2013, Taiwan's Indigenous Peoples Basic Law of 2005, and Philippines' Indigenous People's Rights Act of 1997 are the only laws assessed that require governments to be sensitive to areas of cultural/religious significance and lands held by poor and vulnerable groups when expropriating land.<sup>64</sup> Seven of the countries assessed have laws assessed<sup>65</sup> have laws with provisions that only partially protect these lands from expropriation; these countries received yellow "partial" scores for indicators 3 and 4.<sup>66</sup>

**Reacquisition rights:** Thirteen of the 30 countries<sup>67</sup> either fully or partially grant reacquisition rights.<sup>68</sup> In the remaining 17 countries, there is a potential risk that excessive land will be expropriated, and subsequently abandoned, not utilized, or wasted.

**Key finding:** Of the 30 countries assessed, India and Taiwan are the only countries with laws that establish limitations on the amount and types of lands that governments can acquire (based on an aggregation of the findings from indicators 2–5).

## 5. EXPROPRIATION PROCESSES

Section 16.2 of the VGGTs states that, "States should ensure that the planning and process for expropriation are transparent and participatory. Anyone likely to be affected should be *identified, and properly informed and consulted at all stages.*" (Emphasis added.)

Surveying, identifying, and even mapping affected populations helps governments and acquiring bodies to ascertain the impact that the expropriation will have on land tenure, livelihoods, and the environment. Surveys also help governments to determine *who* is entitled to claim compensation. If the government fails to survey the land, unnoticed landholders may lose their tenure rights without compensation.

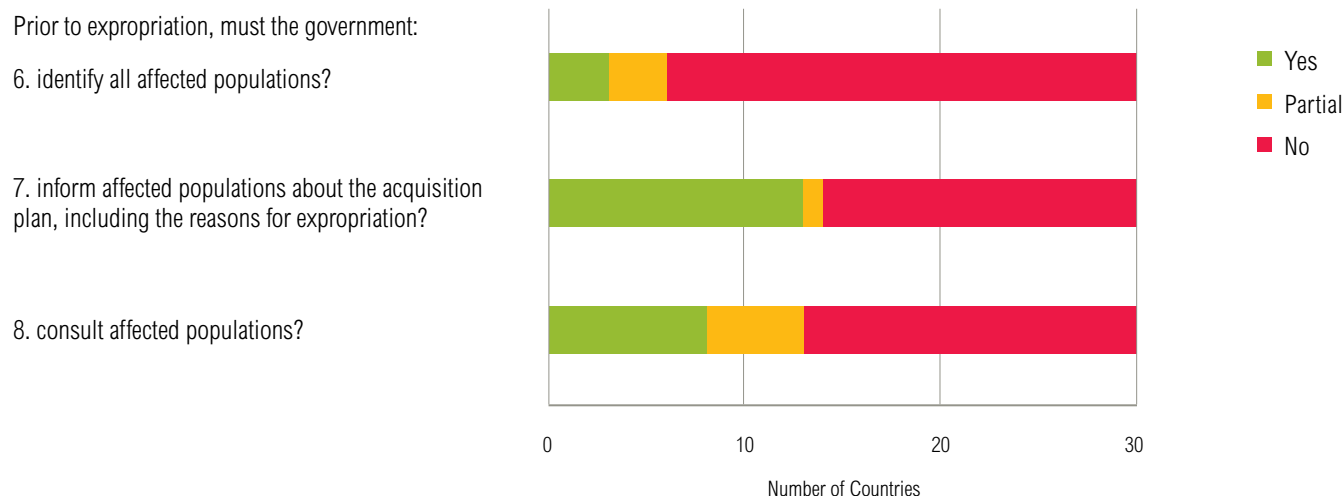
Without adequate access to information on the expropriation plan, including the proposed justifications for expropriation, it is difficult for affected populations to understand how expropriations may impact their tenure rights, to participate meaningfully in consultation processes, and to voice their concerns about whether a proposed expropriation serves a genuine public purpose. For this reason, the FAO Handbook states that information provided to affected populations and the public should explain the purpose of the acquisition, identify the land to be acquired, and provide a clear description of expropriation procedures.<sup>69</sup>

Consulting the public and affected populations prior to expropriation can benefit governments by generating information that enables socially equitable expropriation decisions. The FAO Handbook recommends that “options should be analyzed and presented to the public for their understanding and consultation in order to choose the site that presents the fewest obstacles and best outcomes, having regard to all impacts, including those on any owners and occupants.”<sup>70</sup> Using this information, governments can conduct proper due diligence and develop better expropriation plans by learning, ahead of time, the likely impacts on affected populations, the costs of compensation, and how the expropriation may impact the environment. Consultations can also reduce financial risks by diminishing the chance of delays that may arise when affected populations are not consulted and decide to protest or appeal expropriation decisions in court.

## Research Findings

Findings on the expropriation process are shown in Figure 3.

Figure 3 | **Expropriation Processes (Indicators 6-8)**



*Surveying affected populations:* Only three of the 30 countries assessed (India, Indonesia, and Vietnam) require the government to identify all affected populations prior to expropriation. Indonesia's expropriation law, for example, requires that the expropriation process include an "inventory and identification of possession, ownership, use, and utilization of the land."<sup>71</sup>

Three of the 30 countries (Cambodia, China, and Philippines) require the government to identify some affected populations (e.g., owners), but not all affected populations (these countries received "partial" answers). In the remaining 24 countries, the law does not require governments to survey or identify affected populations prior to expropriation.

*Informing affected populations:* All of the countries assessed require the government to give notice to affected populations prior to expropriating land. However, only 13 of the 30 countries<sup>72</sup> assessed have laws that require governments to proactively provide affected populations with information on the expropriation plan, including the reasons for compulsory acquisition. China received a yellow "partial" because this information must be provided only when buildings on state-owned land are expropriated, but not necessarily when rural land is expropriated.<sup>73</sup> On the other hand, 16 of the 30 countries assessed do not require governments to inform affected populations of the reasons for expropriation.

*Consulting affected populations:* Eight of the 30 countries assessed<sup>74</sup> legally require the government to consult affected populations prior to taking possession of their land. Five of the 30 countries assessed (Ethiopia, Philippines, South Sudan, Taiwan, and Zambia) received "partial" scores because their laws require consultation procedures only under certain circumstances.<sup>75</sup> The remaining 17 countries do not require governments to conduct public consultations prior to expropriating land.

**Key finding:** Of the 30 countries assessed, India, Indonesia, and Vietnam are the only countries with laws that require governments to survey, inform, and consult affected populations prior to expropriation.

## 6. COMPENSATION

The VGGTs address three separate issues relating to compensation: entitlement (who is eligible for compensation); valuation (how should compensation be calculated); and whether compensation must be promptly paid and objectively assessed. These three issues are discussed in detail below.

### Compensation Entitlement

Section 16.1 of the VGGTs states, "[States] *should respect all legitimate tenure rights holders, especially vulnerable and marginalized groups, by . . . providing just compensation in accordance with national law.*" (Emphasis added.)

The VGGTs do not explicitly define the term "legitimate tenure rights holders." However, section 3.1 provides that states "should . . . respect legitimate tenure rights holders and their rights, whether formally recorded or not." While the VGGTs call for states to look beyond formally recognized rights, states are presumably permitted to develop their own interpretations of what constitutes legitimate tenure.

Definitions of "legitimate tenure" can be found in other international instruments. According to the UN Special Rapporteur on the Right to Adequate Housing (2013), for example, the concept of legitimate tenure rights extends beyond mainstream notions of private ownership and includes multiple tenure forms deriving from a variety of systems.<sup>76</sup> The Special Rapporteur goes on to state that legitimate tenure rights can derive from statutory, customary, religious, or hybrid tenure systems.<sup>77</sup> According to Palmer et al. (2009), the term "legitimate" includes both legal legitimacy (rights recognized by law) and social legitimacy (rights that have broad acceptance among society).

### Customary Tenure Holders

While Section 16 is silent on whether customary tenure holders must receive compensation, the VGGTs place special emphasis on the protection of vulnerable and marginalized groups, a category of tenure holders that

presumably includes Indigenous Peoples and local communities who hold land under customary tenure. Moreover, Section 9.4 of the VGGTs calls for states to respect and protect the legitimate tenure rights of Indigenous Peoples and other communities with customary tenure systems.

Recognition and protection of customary tenure is particularly important given that Indigenous Peoples and local communities are estimated to hold as much as 65 percent of the world's land area under customary systems.<sup>78</sup> However, research shows that only 18 percent of the world's land is formally recognized as owned or controlled by local communities and Indigenous Peoples.<sup>79</sup> The World Bank estimates that more than 90 percent of rural land in Africa is undocumented and informally administered, making it susceptible to land grabbing and expropriation without fair compensation.<sup>80</sup> Recognition of these territories is crucial given that up to 2.5 billion people inhabit and depend on community land.<sup>81</sup>

In countries where customary tenure holders must register or otherwise receive formally recognized tenure rights to receive compensation after expropriation, indigenous and local communities are at risk of expropriation without compensation.<sup>82</sup> For example, expropriation of the Gambella farmland in Ethiopia, a country where land registration is required for compensation, displaced

local peasant farmers without compensation because the farmers lacked certificates for their land.<sup>83</sup>

Registration and titling procedures in many countries can be difficult to access, costly, and time-consuming.<sup>84</sup> In India, for example, registration of customary forest rights, in accordance with the 2006 Forest Rights Act, has been riddled with delays.<sup>85</sup> For these reasons, it is important for laws to ensure that customary tenure holders are granted compensation regardless of whether they have obtained formally recognized rights.

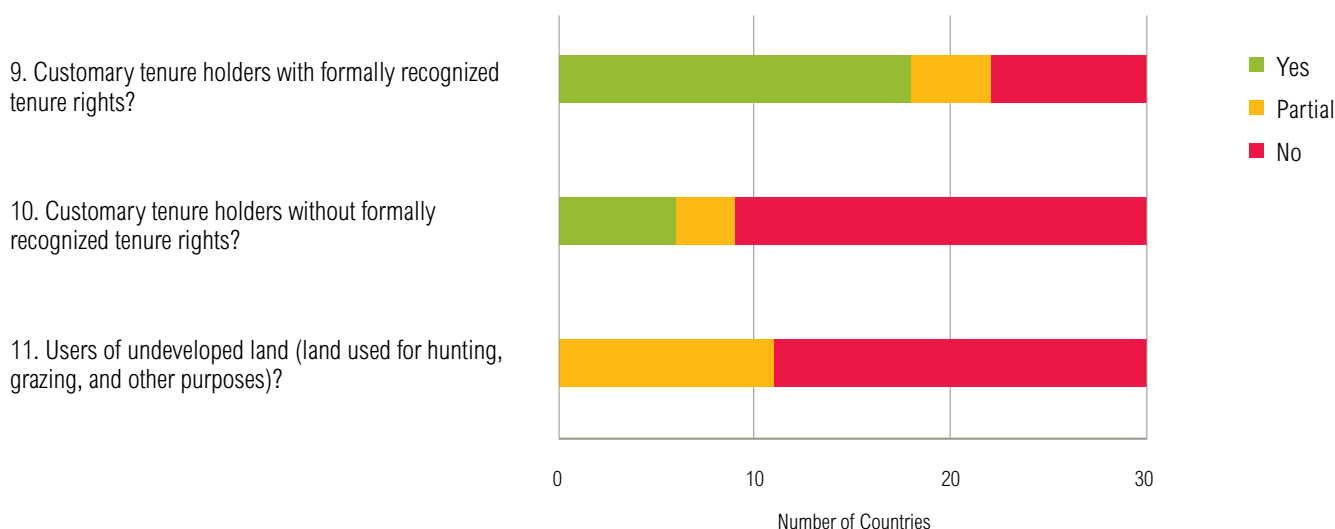
### Users of Undeveloped Land

Across the globe, there are millions of hectares of grasslands, woodlands, wetlands, deserts, pastures, and other commons, which governments often claim as state-owned or as vacant or idle lands. However, these lands are often actually used by rural communities for grazing livestock, hunting animals, and other livelihood needs. Without statutorily recognized rights to compensation for loss of use rights to undeveloped land, these land users may be uncompensated when these common areas are expropriated.

### Research Findings

The findings related to who is entitled to compensation are shown in Figure 4.

Figure 4 | **Who is Legally Entitled to Compensation? (Indicators 9-11)**



**Formal customary rights:** Eighteen of the 30 countries assessed<sup>86</sup> have expropriation laws that require that customary tenure holders be compensated for expropriation on condition that they obtain statutorily recognized customary tenure rights (i.e. through registering or obtaining titles). Cambodia, India, Namibia, and Nigeria received yellow “partial” answers to indicator 9 because their laws grant compensation to some (but not all) formal customary tenure holders. For instance, India’s Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act 2013 grants compensation only to customary holders of forest lands.<sup>87</sup> Eight of the 30 countries do not grant compensation for customary rights, whether these rights are formally recognized or not.<sup>88</sup>

**Informal customary rights:** Registering or obtaining formal title to customary land is *not a prerequisite* to receiving compensation in six of the 30 countries assessed (Philippines, South Africa, South Sudan, Tanzania, Uganda, and Zambia). In these six countries, recognition of customary tenure exists regardless of whether customary landholders register or obtain statutorily recognized titles to customary lands.<sup>89</sup> Burkina Faso, India, and Vietnam received “partial” answers for indicator 10 because their laws suggest that some customary tenure holders may be granted compensation without registering or obtaining title, but not necessarily all customary tenure holders.

**Users of undeveloped land:** Eleven of the 30 countries assessed<sup>90</sup> have laws that provide compensation to users of some undeveloped land areas, but not necessarily all undeveloped land areas (these 11 countries received yellow “partial” answers). Zambia’s Land Acquisition Act, for example, received a “partial” answer to indicator 11 because it establishes a right to compensation for undeveloped land, but only if the land is used for agricultural or pastoral purposes.<sup>91</sup> Claimants must also prove they have used the land within the two years prior to the expropriation.<sup>92</sup> In the remaining 19 countries, the laws do not explicitly provide compensation for loss of access to undeveloped land that is used for pastoral and other uses.

**Key finding:** Only six of the 30 countries assessed have laws that make strides toward respecting legitimate tenure rights by ensuring that customary tenure holders and users of undeveloped areas are entitled to compensation (based on an aggregation of the findings from indicators 9, 10, and 11). In other words, Philippines, South Africa,

South Sudan, Tanzania, Uganda, and Zambia are the only countries that received a green “yes” for indicators 9 and 10, and a yellow “partial yes” for indicator 11.

## Calculating Compensation

Section 16.3 of the VGGTs states that, “States should ensure a *fair valuation* . . . Among other forms, the compensation may be, for example, in *cash, rights to alternative areas, or a combination*.” (Emphasis added.)

The VGGTs do not establish criteria for conducting a “fair valuation” of compensation. Defining these criteria is left to state actors, in accordance with national laws. There are varying interpretations of what constitutes a “fair valuation” of land (e.g. fair market value, replacement costs).<sup>93</sup> The FAO Handbook provides guidance on determining compensation and recommends that compensation should be based on the principles of equity and equivalence. This means that affected persons should receive “no more or no less than the loss resulting from the compulsory acquisition of their land.”<sup>94</sup>

Additional guidance on what constitutes a fair valuation for purpose of compensation is set out in sections 4.12 and 4.19 of the FAO Handbook:

Compensation should be . . . for buildings and other improvements to the land acquired; for the reduction in value of any land retained as a result of the acquisition; and for any disturbances or other losses to the livelihoods of the owner and occupants caused by the acquisition and dispossession . . . The disturbance accompanying compulsory acquisition often means that people lose access to the sources of their livelihoods. This can be due to a farmer losing agricultural fields, a business owner losing a shop, or a community losing its traditional lands.<sup>95</sup>

Ensuring that compensation procedures capture the full range of livelihood losses is particularly important in countries with weak or non-existent land markets, where there may not be a clear market value.<sup>96</sup>

## Gender-Sensitive Approach to Providing Compensation

Although Section 16 of the VGGTs does not explicitly require states to follow a gender-sensitive approach to calculating compensation, gender equality is listed



in Section 3b of the VGGTs as a guiding principle of implementation. Section 3b establishes that states should promote gender equality, which is defined as “ensur[ing] the equal right of women and men to the enjoyment of all human rights, while acknowledging difference between women and men and taking specific measures aimed at accelerating de facto equality when necessary. States should ensure that women and girls have equal tenure rights.”

In addition to Section 3b, other sections of the VGGTs call for states to adopt gender-sensitive approaches to tenure governance, including Sections 4.4, 4.7, 5.3, 5.7, and 10.1. Additionally, Section 16.1 of the VGGTs calls for states to “respect all legitimate tenure rights holders . . . by providing just compensation,” and women landholders are a subset of “legitimate tenure rights holders.”

Because of gender inequalities within land tenure systems,<sup>97</sup> expropriations can have a disproportionate impact on women, especially when compensation is allotted in patriarchal systems. In societies where women are considered dependents of their husbands, and have no direct right to land, compensation is usually paid to the male head of the household. As the FAO Handbook discusses, if compensation is paid to the male head of household, the “needs of women and children may be ignored as the money vanishes, to the detriment of the family’s health and welfare.”<sup>98</sup> When laws are silent on whether compensation must be sensitive to the differing ways in which women and men hold and use their lands and resources,<sup>99</sup> compensation might be paid only to the male head of household. In such cases, women are put at risk of being disproportionately burdened by expropriations.

## Compensation for Economic Activities and Improvements on the Land

The VGGTs do not explicitly call for states to account for the economic activities and improvements on land in the calculation of compensation. However, the need to account for these factors can be inferred from the term “fair valuation” in the VGGTs. For rural farmers, grazers, hunters, and other landholders whose land is their primary source of income, accounting for economic activities and land improvements is particularly crucial. When rural farmers live on and sell crops from their lands, expropriation may leave them without an income

source. In Rwanda, for example, where household farming is a primary source of income for 74.8 percent of the population, a recent survey found that farmers affected by expropriations reported a 32–34 percent drop in income.<sup>100</sup> The loss of other sources of income, such as rental income, is also important to incorporate into the assessment of compensation.

Moreover, if compensation procedures fail to account for the land’s buildings, crops, and other improvements,\* affected populations who built, used, and maintained these improvements might be worse off than they were before their land was taken.

## Compensation for the Historical/Cultural Land Values

Land has cultural, historical, religious, and sentimental value. This is especially true for Indigenous Peoples and local communities who have used their lands for traditional norms and practices for centuries. In addition to the VGGTs, the United Nations Declaration on the Rights of Indigenous Peoples,<sup>101</sup> International Labour Organization Convention 169,<sup>102</sup> and IFC Performance Standard 7<sup>103</sup> indicate that ancestral territories and other lands used for religious, cultural, and traditional practices must be protected and respected.

As the FAO Handbook notes, it is difficult to calculate compensation for non-economic losses such as religious, historical, or cultural claims to the land.<sup>104</sup> For instance, how can the government put a price tag on graveyards, historical places of worship, and other cultural heritage sites?

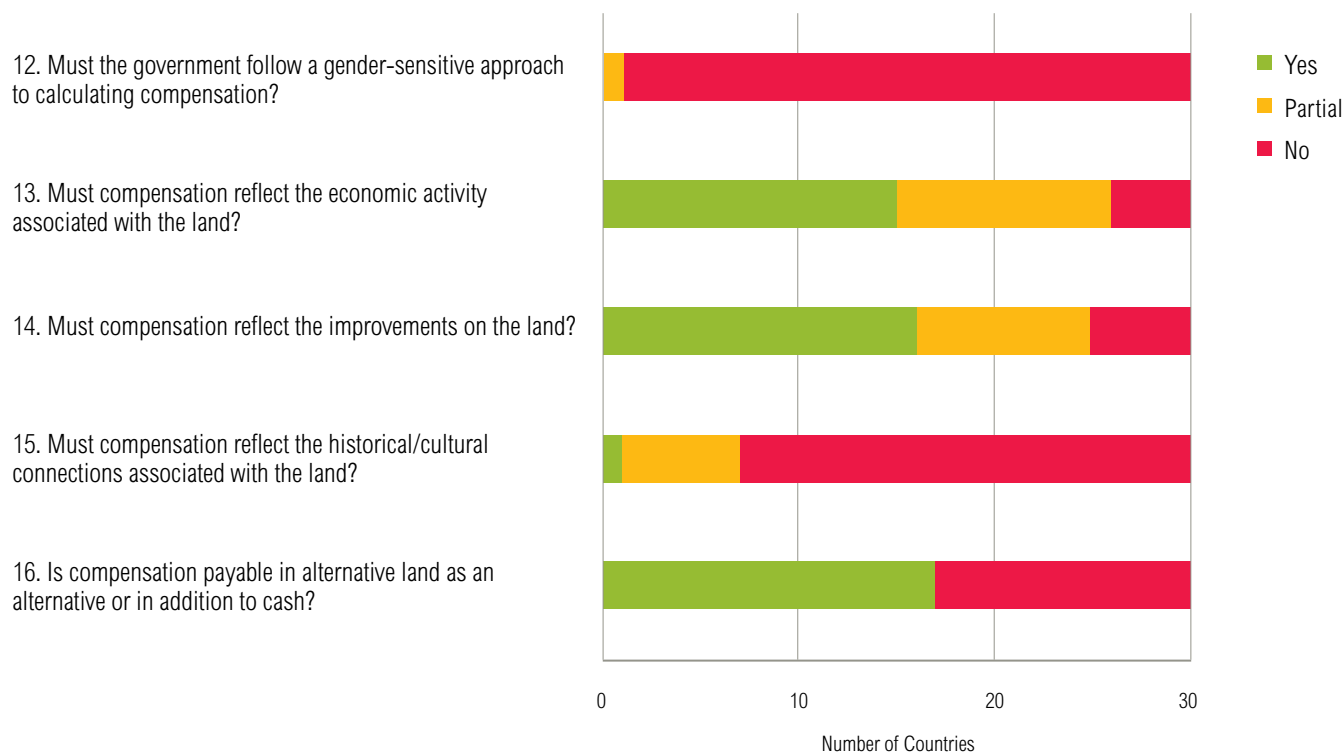
## Compensation in Alternative Land

Section 16.3 of the VGGTs provides that rights to alternative land should be offered as a compensation option. For farmers and rural landholders whose land is their primary source of income and livelihood needs, cash compensation payments may be insufficient to revitalize their livelihoods subsequent to expropriations. In Bangladesh, for example, where compensation is not payable in alternative land,<sup>105</sup> 77 percent of the affected households surveyed stated that compensation payments did not sufficiently cover the lost lands, and 90 percent stated they were unable to use the cash to purchase land equivalent in area to the land they lost.<sup>106</sup> Using alternative

\* “Improvements” refers to the attached and unattached assets on the land (crops, buildings, etc.).



Figure 5 | **How Must Compensation be Calculated? (Indicators 12-16)**



land for farming, hunting, and gathering may be the only means by which these populations can earn a living, meet basic needs, and sustain their livelihoods.

## Research Findings

Findings related to the calculation of compensation are presented in Figure 5.

**Gender-sensitive compensation:** Of the 30 countries surveyed, India is the only country with a national law that considers gender issues in calculating compensation. India’s Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act of 2013 received a yellow “partial” score because it establishes a gender-sensitive provision, which addresses some of the gender issues associated with compensation procedures.<sup>107</sup> Under Indian law, widows, divorcees, and women deserted by families are considered a separate category of “affected families” entitled to compensation, meaning that gender is at least partially accounted for in the assessment of compensation. However, the Indian government is not necessarily obliged to follow a gender-

sensitive approach to compensating affected landholders in every expropriation case (e.g. in cases where there are no “widows, divorcees, or women deserted by families”).

The remaining 29 countries assessed establish gender-neutral compensation procedures, meaning that laws in these countries generally grant compensation to “any person” with an interest or claim to the expropriated land. Women in these countries may be at risk of being disproportionately burdened by expropriations.

**Economic activities:** Twenty-six of the 30 countries assessed either fully or partially ensure that compensation accounts for the economic activity associated with the expropriated land. Fifteen of the 30 countries assessed<sup>108</sup> grant compensation for all economic benefits generated from the land. On the other hand, 11 of the 30 countries<sup>109</sup> grant compensation for some, but not all, economic activities associated with the land (these countries received a yellow “partial”). Four of the countries assessed<sup>110</sup> have laws that do not explicitly require that compensation take account of economic activities.

**Improvements:** Twenty-five of the 30 countries either fully or partially ensure compensation accounts for improvements on the land. Sixteen of the 30 countries assessed<sup>111</sup> have laws that require that compensation reflect all improvements on the land, while nine<sup>112</sup> provide that compensation reflect only some improvements (these countries received a yellow “partial”). Malaysia’s law, for example, provides compensation only for improvements made within two years of the expropriation.<sup>113</sup>

**Historical/cultural land values:** Philippines is the only country with a law (the Indigenous People’s Rights Act of 1997) that helps to ensure that compensation payments reflect the historical/cultural connections associated with land. In addition to establishing special protections for ancestral lands held by Indigenous Peoples, the law establishes an Ancestral Domains Fund, which can be used to compensate Indigenous Peoples when their ancestral domains are expropriated.<sup>114</sup> Six of the 30 countries assessed<sup>115</sup> establish legal requirements, which partially ensure that compensation will reflect historical/cultural connections with the land.<sup>116</sup> The remaining 23 countries have laws that fail to ensure that the historical and cultural values of expropriated lands will be reflected in the assessment of compensation.

**Alternative land:** Seventeen of the 30 countries assessed<sup>117</sup> grant alternative land as a compensation option. This indicator assesses only whether alternative land is an option for compensation payment when land is expropriated, not whether alternative land must be provided as a form of compensation in every case. In the remaining 13 countries assessed, farmers and other rural landholders dependent on land for income are at risk of suffering significant livelihood losses because the law does not provide them with alternative land as a compensation option.

**Key finding:** None of the 30 countries have laws ensuring that governments will conduct a comprehensive\* and gender-sensitive valuation of compensation, consistent with the VGGTs.

## Prompt Payment and Objective Assessment of Compensation

Section 16.3 of the VGGTs provides that, “States should ensure . . . *prompt compensation* in accordance with national law.” (Emphasis added.)

Section 16.6 of the VGGTs states that, “all parties should endeavor to prevent corruption, particularly through use of *objectively assessed values*, transparent and decentralized processes and services, and a *right to appeal*.” (Emphasis added.)

## Prompt Payment of Compensation

Section 16.3 of the VGGTs calls for states to provide “prompt” payment of compensation to ensure that affected populations are able to maintain their livelihoods after their land is acquired. The FAO Handbook points out that, “when the acquiring agency takes possession before full compensation is paid, there may be little incentive for it to make the final payment.”<sup>118</sup> The FAO Handbook further states that laws should prohibit governments and acquiring bodies from taking possession of acquired land until after a substantial percentage of compensation has been paid.<sup>119</sup> When governments are not required to provide compensation payments in a timely manner, there is an increased risk that affected populations will fall into poverty while waiting for compensation to be paid. Box 7 notes some examples of delayed compensation payments in the surveyed countries.

### Box 7 | Delays in Compensation Payments

- Despite the 120-day deadline on compensation, a recent survey in **Rwanda** found that payments of compensation for expropriation were, on average, delayed by 16 months past the legally imposed deadline for compensation payments.<sup>120</sup>
- In **Ghana**, where there are no legally imposed time constraints on the payment of compensation,<sup>121</sup> compensation was not paid for approximately 90 percent of all land expropriated between 1966 and 2001.<sup>122</sup> As of 2001, there were hundreds of pending cases in courts petitioning the government to either pay compensation or return lands to indigenous landholders.<sup>123</sup>
- In **China**, where there are no legally imposed time constraints on the payment of compensation,<sup>124</sup> the promise of cash compensation payments was unfulfilled in approximately one-third of the 476 land expropriations surveyed.<sup>125</sup>

\* “Comprehensive” for purposes of this working paper means accounting for the economic activities, improvements, and historical/cultural connections associated with the land.

## The Right to Negotiate Compensation Amounts

Although the VGGTs do not explicitly call for states to provide affected landholders with the right to negotiate compensation levels, negotiation proceedings may help countries “prevent corruption . . . through the use of values that are objectively assessed using transparent and decentralized processes” consistent with Section 16.6. This may prevent outcomes such as those witnessed in Tanzania, where compensation allotments were reportedly calculated behind closed doors, were perceived as arbitrary, and caused mistrust of the government.<sup>126</sup> After long delays, affected landholders in Tanzania were asked to either “take it or leave it” and were not given the chance to negotiate.<sup>127</sup>

The FAO Handbook states that “fair and transparent negotiations [between governments and affected populations] help break down the barriers between the acquiring agency and the people whose land is being acquired, and can allow each party to have a better understanding of the needs of the others.”<sup>128</sup> Additionally, good faith negotiating between parties can reduce the chance of delays later in the expropriation process; for instance, delays that arise when affected populations

are unsatisfied with their compensation amounts and decide to appeal to courts. In Ethiopia, for example, where affected populations are not granted the legal right to negotiate compensation amounts,<sup>129</sup> 86 percent of the affected persons surveyed stated that they were not satisfied with the compensation offered when land in Bahir Dar was expropriated.<sup>130</sup>

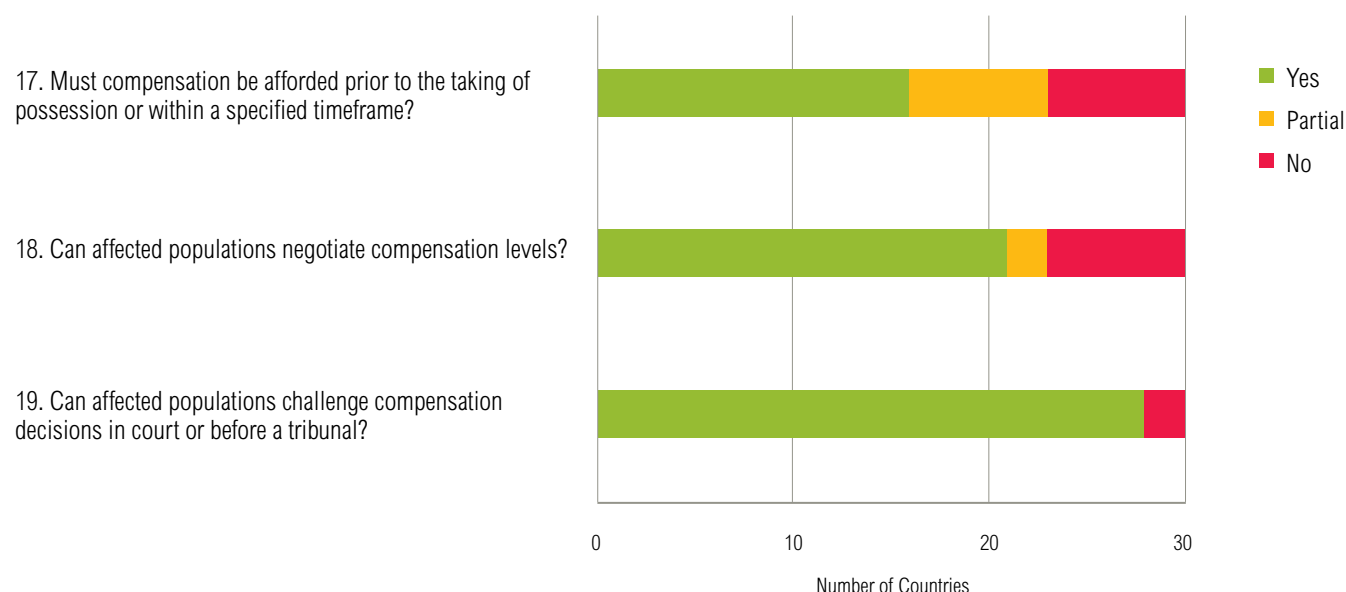
## The Right to Challenge Compensation Decisions in Courts and Tribunals\*

Section 16.3 of the VGGTs calls for states to provide a right to appeal. Such appeals may be needed when governments use incorrect or illegal procedures for calculating compensation and, consequently, affected populations are allotted insufficient compensation.<sup>131</sup> Subjecting compensation decisions to judicial or tribunal review reduces the risk that compensation will be illegally or insufficiently assessed.

## Research Findings

Findings related to the prompt payment and objective assessment of compensation are presented in Figure 6.

Figure 6 | **Prompt Payment and Objective Assessment of Compensation (Indicators 17-19)**



\* A “tribunal” for purposes of this working paper means a government body, other than a court, that is granted legal authority to adjudicate and rule on compensation claims. “Tribunals” include land valuation committees, arbitrators, and other designated government bodies.

**Compensation deadline:** In 16 of the 30 countries assessed,<sup>132</sup> governments are legally required to pay compensation prior to taking possession of the expropriated land or within a specified timeframe thereafter. Seven of the 30 countries assessed<sup>133</sup> have laws that require governments to pay compensation promptly, but these laws provide exceptions that permit governments to delay compensation payments under certain circumstances (these countries received yellow “partial” answers).<sup>134</sup> Seven of the 30 countries assessed do not establish time constraints on when compensation must be paid.<sup>135</sup>

**Compensation negotiation:** Twenty-one of the 30 countries assessed<sup>136</sup> grant affected populations the legal right to negotiate compensation amounts with acquiring bodies. Philippines and Namibia received “partial” answers because their laws permit some, but not all, affected landholders to negotiate compensation amounts. Seven of the 30 countries<sup>137</sup> do not explicitly grant affected landholders the right to negotiate compensation payments.

**Compensation appeals:** Affected populations are granted the right to challenge compensation decisions before courts or tribunals in 28 of the 30 countries assessed. In two of the 30 countries (Afghanistan and Vietnam), affected populations are not explicitly granted the right to challenge compensation decisions in court or before a tribunal.

**Key finding:** Eight of the 30 countries have laws that provide prompt payment of compensation, a right to negotiate compensation amounts, and a right to challenge compensation decisions before courts and tribunals. Botswana, Hong Kong, Indonesia, Kazakhstan, Kenya, Rwanda, Sri Lanka, and Uganda are the only countries assessed with laws that received green “yes” answers to all of the indicators in Figure 6 (indicators 17–19).

## 7. REHABILITATION AND RESETTLEMENT

Section 16.8 of the VGGTs states that, “States should, prior to eviction or shift in land use which could result in depriving individuals and communities from access to their productive resources, *explore feasible alternatives in consultation with the affected parties . . . with a view to avoiding, or at least minimizing, the need to resort to evictions.*” (Emphasis added.)

Section 16.9 states, “States should, to the extent that resources permit, take appropriate measures to *provide adequate alternative housing, resettlement or access to productive land.*” (Emphasis added.)

Several multilateral institutions, such as the World Bank and the Asian Development Bank, have resettlement policies that require borrowers to resettle and rehabilitate affected populations who are displaced by institutionally funded development projects (see Box 3 for discussion of World Bank Environmental and Social Safeguards).<sup>138</sup> However, these policies apply only to borrowers of institutional funding. When governments and acquiring bodies expropriate land without borrowing funds or receiving support from institutions with resettlement policies, the acquiring bodies are obliged only to follow domestic expropriation laws. For this reason, it is worthwhile to investigate whether domestic expropriation laws establish resettlement procedures and provide rehabilitation assistance.

### Resettlement Assistance

Expropriations can often lead to the physical displacement (physical relocation, loss of shelter) and the economic displacement (loss of income-generating assets or other means of sustaining livelihoods) of affected populations.<sup>139</sup> After affected populations are forced to move off their land, they may be subject to significant impoverishment risks, including landlessness, joblessness, homelessness, marginalization, food insecurity, increased morbidity, loss of access to common property resources, and community disruption.<sup>140</sup> When governments are not legally required to provide a relocation allowance, alternative housing, or alternative land, there is an increased risk that the displaced persons will be disadvantaged by expropriations.

In Ethiopia and Bangladesh, where resettlement assistance is not provided by law, displaced persons suffered a reduced standard of living after they were evicted. In Addis Ababa, Ethiopia, for example, 1,320 households were displaced from their lands to make way for an urban development project.<sup>141</sup> Of the 66 displaced persons surveyed, 29 percent earned less than 500 Ethiopian Birr (ETB) (roughly \$23) per month in their old villages. In the new resettlement sites, the number of households earning less than 500 ETB per month increased to 77 percent.<sup>142</sup> Likewise, 103 of 133

households (77 percent) surveyed in Tangail district of Bangladesh said that their economic status became worse after resettlement.<sup>143</sup>

The VGGTs call for states to provide displaced persons with access to alternative housing and productive land. If the expropriated land was cultivable farmland which previously supported food crops or livestock, forced migration to degraded land will be particularly burdensome for the displaced populations.

Consultative Resettlement Processes

Allowing displaced persons to participate in the decision-making process can help governments make more socially equitable resettlement decisions and reduce the risks of delays from disputes with displaced persons. For instance, in parts of India, displaced persons have persistently protested development projects that led to forced evictions without consultations.<sup>144</sup>

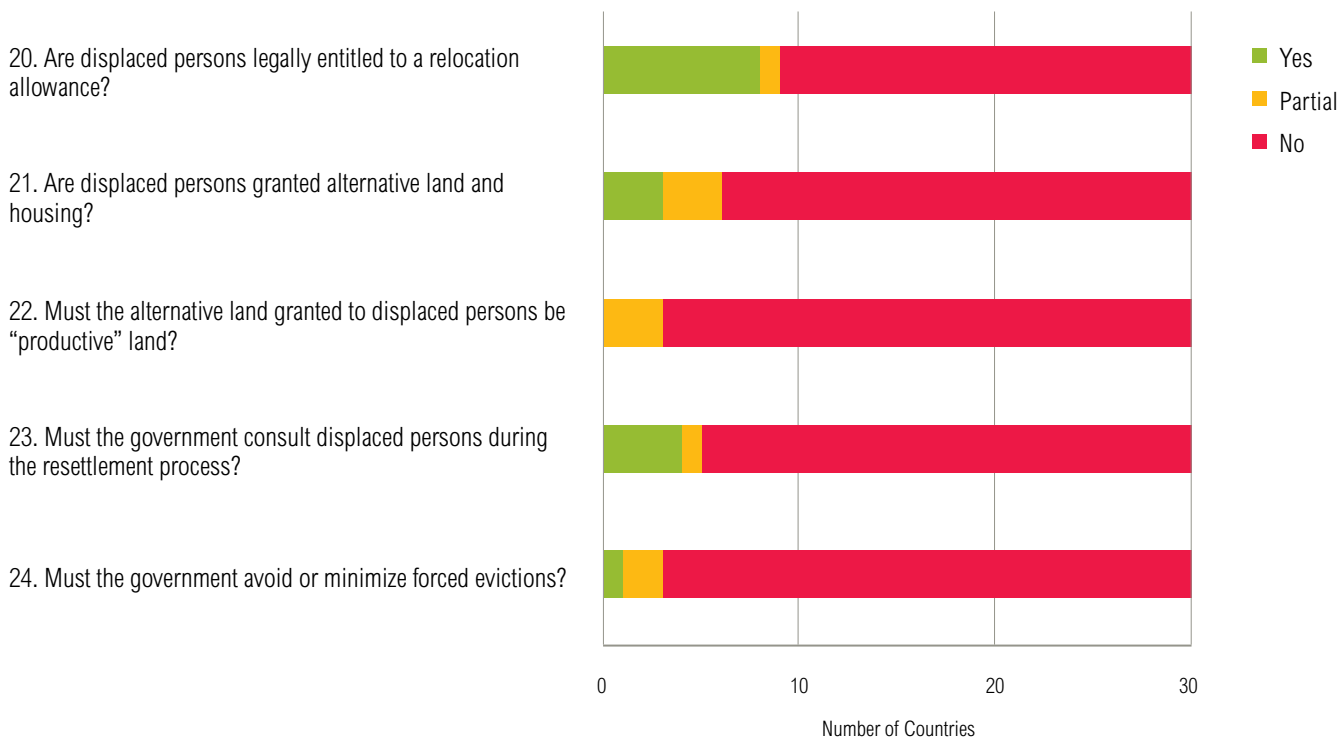
Avoiding or Minimizing Forced Evictions

Forced evictions can violate internationally recognized human rights, such as the right to property,<sup>145</sup> and the rights to housing and an adequate standard of living.<sup>146</sup> As long as forced evictions are carried out in compliance with domestic and international human rights treaties, forced evictions are permitted under international human rights law.<sup>147</sup> However, due to the profound impacts forced evictions have on human rights and livelihoods, the VGGTs call for states to avoid or minimize forced evictions. It is noteworthy that the World Bank Operational Manual on Involuntary Resettlement (O.P. 4.12)<sup>148</sup> also requires that forced evictions occur only as a last resort.

Research Findings

Findings on issues of rehabilitation and resettlement procedures are shown in Figure 7.

Figure 7 | Rehabilitation and Resettlement Procedures (Indicators 20-24)



**Relocation allowance:** Eight of the 30 countries assessed<sup>149</sup> have laws that grant displaced persons an allowance to cover the cost of relocating to alternative land subsequent to expropriation. South Sudan received a yellow “partial” because the 2009 Land Act states that, “government and private companies shall assist internally displaced persons and returnees in their efforts to improve their livelihood” but it is unclear whether this means that a relocation allowance is provided to displaced persons.<sup>150</sup> In the remaining 21 countries assessed, displaced persons are vulnerable to impoverishment from having to bear the costs associated with relocating to alternative land.

**Alternative land and housing:** Three of the 30 countries assessed (Ethiopia, India, and Indonesia) have laws that explicitly grant alternative land to displaced persons. Three of the countries assessed (Ghana, Philippines, and Vietnam) have laws that grant alternative land to displaced persons in some cases, but alternative land is not guaranteed every time an expropriation project causes displacement (these countries received yellow “partial” answers).<sup>151</sup>

**Productive alternative land:** Only three of the 30 countries assessed (Ghana, India, and Philippines) have laws that provide productive alternative land to displaced persons, and only under certain circumstances (these countries received yellow “partial” answers).<sup>152</sup>

**Consultations on resettlement:** Only four of the 30 countries assessed (China, India, South Sudan, and Vietnam) require the government to consult displaced persons during the resettlement process.<sup>153</sup> Philippines received a yellow “partial” answer for indicator 23.<sup>154</sup>

**Minimizing or avoiding forced evictions:** India’s 2013 Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act is the only law assessed that explicitly obligates the government to avoid or minimize forced evictions.<sup>155</sup> Philippines’ Indigenous People’s Rights Act of 1997 and Taiwan’s Indigenous Peoples Basic Law of 2005 received a yellow

“partial” answer for indicator 24.<sup>156</sup> In the remaining 27 countries, there is no legal obligation on governments to minimize or avoid forced evictions, which means that, potentially, there is an increased risk of displacement in these countries.

**Key finding:** Of the 30 countries assessed, India is the only country with a law that provides robust rehabilitation and resettlement procedures. In other words, India’s Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act of 2013 is the only law assessed that received a green “yes” or a yellow “partial” answer on indicators 20–24.

## 8. FINDINGS BY COUNTRY AND REGION

Figure 8 aggregates the findings from the 24 expropriation indicators and shows the total yes, partial, and no scores for each country. Figure 8 shows that, of the 30 countries assessed, India is closest to adopting the international standards established in Section 16 of the VGGTs. Indonesia and Vietnam are also noteworthy for having laws that incorporate several of the VGGT standards. Liberia lags behind many of the other countries because the passage of Liberia’s Land Rights Act is still pending. South Africa’s Parliament recently passed an Expropriation Bill, which may change South Africa’s results once it comes into effect. A comprehensive table showing how each country performed against each of the 24 expropriation indicators is provided in the Appendices.



Figure 8 | Findings by Country

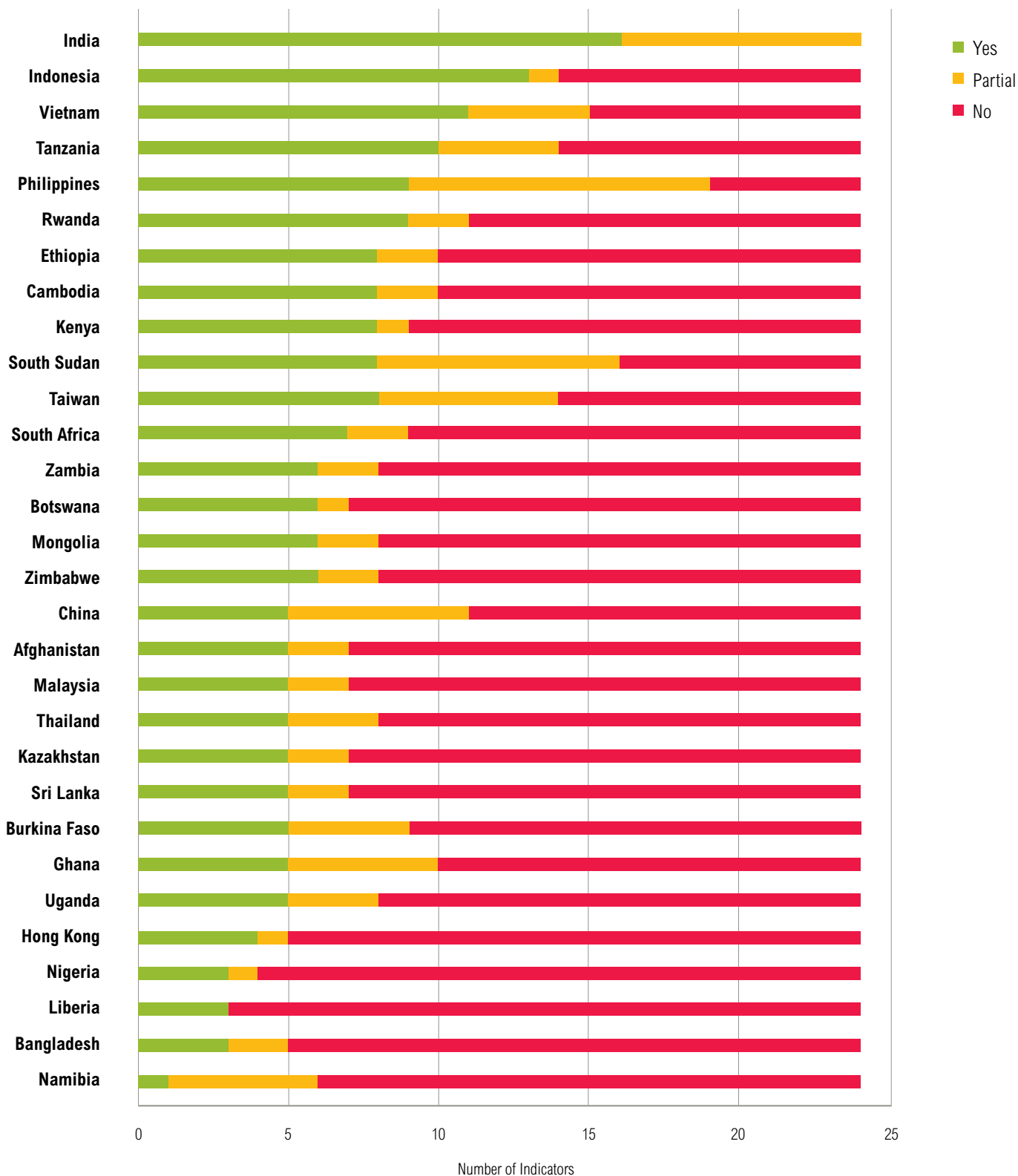


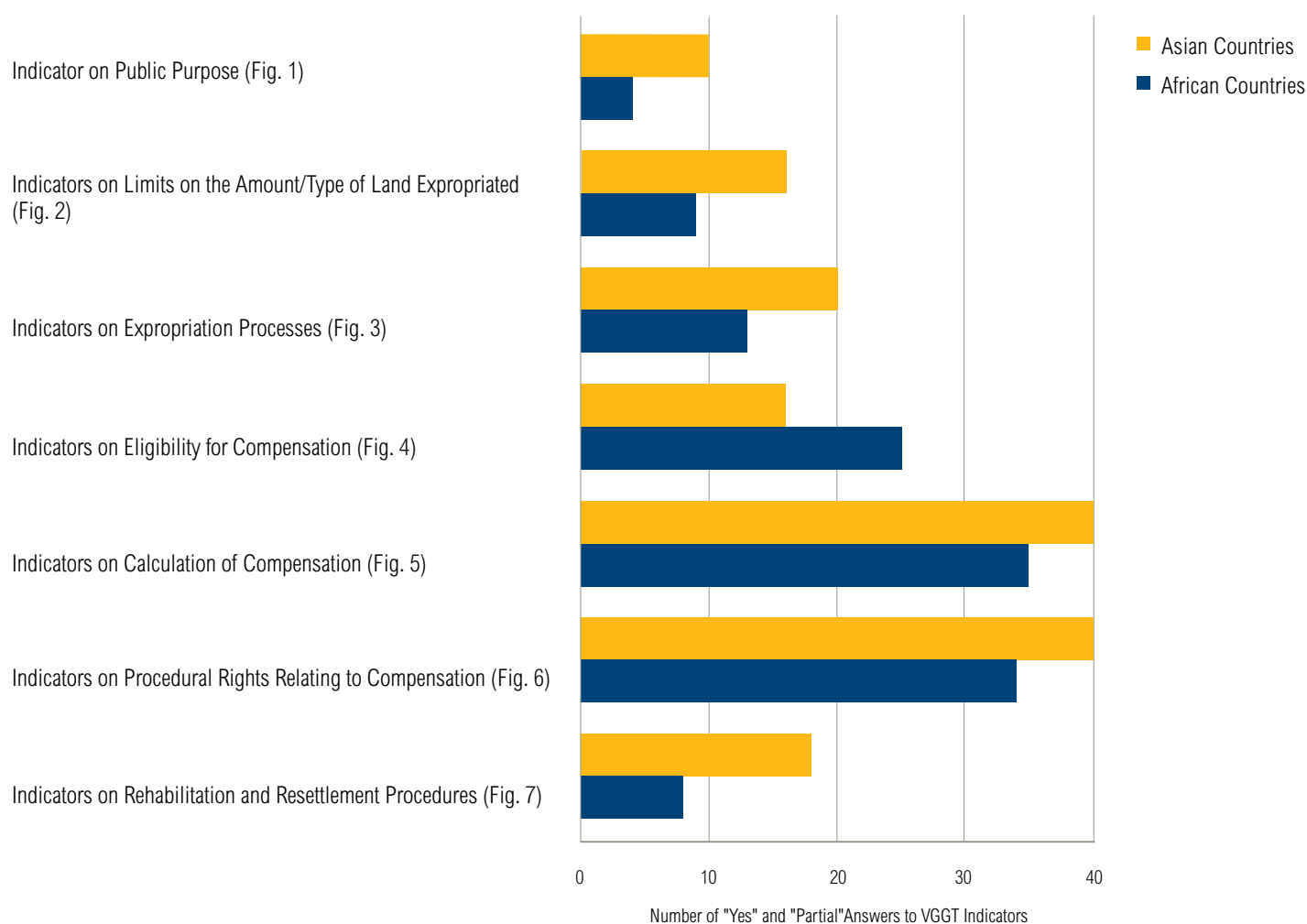
Figure 9 disaggregates the indicator findings by region. While it does not show a clear distinction between Asia and Africa, there are a few noteworthy points.

First, Asia (defined by the 15 Asian countries reviewed) is slightly closer than Africa (defined by 15 African countries reviewed) to adopting the VGGT principles relating to limitations on the amount/types of land expropriated; expropriation processes; and calculation of compensation; procedural compensation rights; and rehabilitation/resettlement procedures. One reason

for this finding is that Cambodia, India, Indonesia, and Vietnam recently passed laws that incorporate many of the standards established in Section 16 of the VGGTs.

Second, Africa is closer than Asia to adopting the VGGT principles relating to eligibility for compensation. Of the 30 countries assessed, there are more African countries than Asian countries with laws that grant compensation to customary tenure holders.

Figure 9 | **Findings by Region**



## 9. RECOMMENDATIONS

This working paper aims to establish a benchmark for progress to assist civil society organizations, NGOs, policymakers, advocates, affected populations, investors, and other stakeholders in measuring government progress toward adopting international standards on expropriation in domestic laws.

In the majority of the 30 countries assessed, significant steps must be taken to ensure that expropriation laws adopt international standards established in Section 16 of the VGGTs. Progressive legislation on expropriation recently passed in Cambodia, India, Indonesia, and Vietnam shows that some governments are taking steps to adopt international standards and to ensure responsible land governance. But there remains ample room for progress.

The six recommendations below are based on the research findings outlined above. They are directed toward governments, civil society organizations, and other stakeholders working on legal reforms relating to expropriation, compensation, and resettlement.

- 1. Provide a clear conceptualization of public purpose to allow for judicial review.** In accordance with Section 16.1 of the VGGTs, laws should provide a clearly defined list of public purposes to guide courts when determining whether proposed expropriation decisions serve genuine public purposes. Laws should subject government decisions to independent and impartial oversight by judiciaries to ensure proper checks and balances, and to prevent executive and legislative branches from abusing, misusing, or over-using expropriation power.
- 2. Limit the amount and types of land that governments can expropriate.** In accordance with the VGGTs, governments should limit the amount of land expropriated to the minimum amount necessary to achieve a public purpose. Governments should establish special protections for areas of cultural, historical, and environmental significance, and areas held by poor and vulnerable groups, including Indigenous Peoples and local communities. Laws should ensure that these areas are acquired only as a last resort, and, if expropriation of these areas is unavoidable, that the risks to these impacted areas are

adequately addressed. One option for ensuring that states are sensitive to these areas is for laws to obligate governments to conduct and publish a cost-benefit analysis, whereby the government weighs the costs borne by the affected populations and environments against potential public benefits. In addition to thoroughly examining project plans (e.g., financial costs, schedules, and monitoring capacity) these assessments should incorporate public consultations. Government bodies should consider conducting a “proportionality test,”<sup>157</sup> which entails examining a proposed expropriation project to determine (a) whether the expropriation project is *necessary* to serve a public purpose (there are no less intrusive alternatives), (b) whether the project is *suitable* (reasonably likely to achieve the intended public benefit), and (c) whether the benefits deriving from the expropriation are *proportionate* to costs borne by affected populations and the environment.

- 3. Establish transparent and participatory processes for the expropriation of land.** To conform to Section 16.2 of the VGGTs, governments should be legally obligated to survey, inform, and consult affected populations in an open and participatory manner prior to taking possession of expropriated land. By surveying affected populations, governments can determine who is entitled to compensation and understand the impact of the expropriation on livelihoods. Providing information on expropriation plans to affected populations can be an effective first step toward ensuring that these populations are able to participate meaningfully in expropriation decision-making and other processes (e.g., compensation processes, resettlement processes).
- 4. Respect legitimate tenure rights by ensuring that customary tenure rights holders are compensated when their lands are expropriated.** To ensure that tenure rights are respected, states should be required to compensate all affected populations, including unregistered customary tenure rights holders and users of pastures and other undeveloped areas.

**5. Ensure that governments follow a comprehensive and gender-sensitive approach to compensating affected populations.**

Consistent with the VGGT gender provisions, states should be required to follow a gender-sensitive approach to providing compensation, accounting for the losses borne by women and men from expropriation. For compensation to comprehensively reflect all of the losses borne by the tenure rights holders, compensation payments should reflect the land's historical and cultural value, in addition to economic activities and improvements associated with the land. Consultations with male and female landholders about the ways in which they use their land, and their land's historical/cultural value, can be an effective measure to ensure that compensation is sufficiently comprehensive. Additionally, states should be legally obligated to pay compensation to affected populations prior to taking possession of the expropriated land, and should ensure that affected landholders can negotiate compensation amounts and appeal compensation decisions to courts or tribunals.

**6. Minimize forced evictions and, if evictions are unavoidable, provide displaced persons with a relocation allowance, alternative housing, or access to productive alternative land.** As stated in Section 16.8 of the VGGTs, governments should be legally required to avoid or minimize forced evictions. When forced evictions are unavoidable, the government should be legally obligated to consult with displaced persons, and to provide them with a relocation allowance and alternative land to ensure that they are not subject to impoverishment risks. Lawmakers should look at India's Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act of 2013 as a model when drafting resettlement procedures that adopt the VGGT standards established in Sections 16.8 and 16.9.

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# APPENDICES

## Appendix A

### Expropriation Indicators

1. Is “public purpose” clearly defined to allow for judicial review?
2. Must the government expropriate only the minimum amount of land necessary to achieve a public purpose?
3. Are areas of cultural, religious, and environmental significance given special protection?
4. Is land held by poor and vulnerable groups given special protection?
5. Must the government grant reacquisition rights when the land is no longer needed for a public purpose?
6. Must the government identify all affected populations prior to the expropriation?
7. Prior to expropriation, must the government inform affected populations about the acquisition plan, including the reasons for expropriation?
8. Prior to expropriation, must the government consult affected populations?
9. Are customary tenure holders with formally recognized tenure rights entitled to compensation?
10. Are customary tenure holders without formally recognized tenure rights entitled to compensation?
11. Are users of undeveloped land (land used for hunting, grazing, and other purposes) entitled to compensation?
12. Must the government follow a gender-sensitive approach to calculating compensation?
13. Must compensation reflect the economic activity associated with the land?
14. Must compensation reflect the improvements on the land?
15. Must compensation reflect the historical/cultural connections associated with the land?
16. Is compensation payable in alternative land as an alternative or in addition to cash?
17. Must compensation be afforded prior to the taking of possession or within a specified timeframe?
18. Can affected populations negotiate compensation levels?
19. Can affected populations challenge compensation in court or through a tribunal?
20. Are displaced persons legally entitled to a relocation allowance?
21. Are displaced persons granted alternative land and housing?
22. Must the alternative land granted to displaced persons be “productive” land?
23. Must the government consult displaced persons during the resettlement process?
24. Must the government avoid or minimize forced evictions?

Figure A.1 | Indicator Findings by Country

■ Yes    ■ Partial    ■ No

INDICATOR	INDIA	BANGLADESH	VIETNAM	CAMBODIA	SRI LANKA	AFGHANISTAN	CHINA	HONG KONG	TAIWAN	SOUTH SUDAN	INDONESIA	MONGOLIA	MALAYSIA	THAILAND	KAZAKHSTAN	PHILIPPINES	BURKINA FASO	ZIMBABWE	ZAMBIA	GHANA	UGANDA	LIBERIA	BOTSWANA	TANZANIA	NAMIBIA	SOUTH AFRICA	ETHIOPIA	KENYA	NIGERIA	RWANDA	
1	Y	N	P	Y	N	P	P	N	P	P	Y	Y	N	P	P	N	P	N	N	N	N	N	N	N	N	N	N	N	P	N	P
2	Y	N	N	N	N	N	N	N	Y	N	N	N	Y	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
3	Y	P	N	N	N	P	N	N	Y	P	N	N	N	N	N	Y	N	N	N	N	N	N	N	N	N	N	N	N	N	N	P
4	Y	N	N	N	N	N	N	N	Y	P	N	N	N	N	N	Y	N	P	N	N	N	N	N	P	N	N	N	N	N	N	N
5	P	P	N	Y	P	N	P	N	P	N	N	N	N	Y	N	P	N	Y	N	Y	N	Y	N	N	N	N	N	Y	Y	N	N
6	Y	N	Y	P	N	N	P	N	N	N	Y	N	N	N	N	P	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
7	Y	N	Y	Y	N	N	P	N	N	Y	Y	Y	N	Y	N	N	Y	Y	N	N	N	Y	N	Y	N	Y	N	N	N	N	Y
8	Y	N	Y	Y	N	N	Y	N	N	P	Y	N	N	N	N	P	Y	N	P	N	N	N	N	Y	N	N	P	N	N	Y	Y
9	P	N	Y	P	N	Y	N	N	Y	Y	Y	N	Y	N	N	Y	Y	Y	Y	Y	Y	N	Y	Y	P	Y	Y	Y	Y	P	Y
10	P	N	P	N	N	N	N	N	N	Y	N	N	N	N	N	Y	P	N	Y	N	Y	N	N	Y	N	Y	N	N	N	N	N
11	P	N	N	N	N	N	N	N	P	P	P	N	N	P	N	P	P	N	P	N	P	N	N	P	N	P	N	N	N	N	N
12	P	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
13	Y	Y	Y	Y	Y	N	P	Y	P	P	Y	P	Y	Y	Y	P	P	P	N	P	P	N	Y	Y	P	Y	P	Y	N	Y	
14	Y	N	Y	N	N	Y	P	P	Y	Y	Y	Y	P	P	P	Y	N	Y	Y	P	P	N	P	Y	P	Y	Y	Y	Y	Y	Y
15	P	N	P	N	P	N	N	N	P	N	N	N	N	N	N	Y	N	N	N	P	N	N	N	P	N	N	N	N	N	N	N
16	Y	N	Y	Y	Y	Y	N	N	N	Y	Y	Y	N	N	Y	Y	N	N	Y	Y	N	N	N	Y	N	N	Y	Y	Y	Y	Y
17	P	Y	Y	N	Y	Y	N	Y	Y	P	Y	P	P	Y	Y	Y	N	Y	N	N	Y	N	Y	P	P	P	Y	Y	N	Y	
18	Y	N	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	N	Y	P	Y	N	Y	Y	Y	N	Y	Y	P	Y	N	Y	N	Y	
19	Y	Y	N	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
20	Y	N	Y	N	N	N	Y	N	Y	P	Y	N	N	N	N	N	N	N	N	N	N	N	Y	Y	N	N	Y	N	N	N	N
21	Y	N	P	N	N	N	N	N	N	N	Y	N	N	N	N	P	N	N	N	P	N	N	N	N	N	N	N	Y	N	N	N
22	P	N	N	N	N	N	N	N	N	N	N	N	N	N	N	P	N	N	N	P	N	N	N	N	N	N	N	N	N	N	N
23	Y	N	Y	N	N	N	Y	N	N	Y	N	N	N	N	N	P	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
24	Y	N	N	N	N	N	N	N	P	N	N	N	N	N	N	P	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N



## Appendix B

Table B.1 | **Laws Reviewed for this Study**

<b>Afghanistan</b>	<ol style="list-style-type: none"> <li>1. Government of Afghanistan. 2004. Constitution of Afghanistan. Available at: <a href="http://www.afghanembassy.com.pl/afg/images/pliki/TheConstitution.pdf">http://www.afghanembassy.com.pl/afg/images/pliki/TheConstitution.pdf</a></li> <li>2. Government of Afghanistan. 2000. Law on Land Expropriation (Amended 2005). <a href="http://faolex.fao.org/docs/texts/afg78399.doc">http://faolex.fao.org/docs/texts/afg78399.doc</a></li> <li>3. Government of Afghanistan. 2000. Land Management Law of the Islamic Emirate of Afghanistan. Available at: <a href="http://faolex.fao.org/docs/texts/afg90120.doc">http://faolex.fao.org/docs/texts/afg90120.doc</a></li> </ol>
<b>Bangladesh</b>	<ol style="list-style-type: none"> <li>1. Government of Bangladesh. 1972. Constitution of Bangladesh (Amended 2011). Available at: <a href="https://www.constituteproject.org/constitution/Bangladesh_2011.pdf">https://www.constituteproject.org/constitution/Bangladesh_2011.pdf</a></li> <li>2. Government of Bangladesh. 1982. The Acquisition and Requisition of Immovable Property Ordinance. Available at: <a href="http://faolex.fao.org/docs/texts/bgd35873.doc">http://faolex.fao.org/docs/texts/bgd35873.doc</a></li> <li>3. Government of Bangladesh. 1950. Acquisition of Waste Land Act. Available at: <a href="http://faolex.fao.org/docs/texts/bgd95300.doc">http://faolex.fao.org/docs/texts/bgd95300.doc</a></li> </ol>
<b>Botswana</b>	<ol style="list-style-type: none"> <li>1. Government of Botswana. Constitution of Botswana. Available at: <a href="http://www.chr.up.ac.za/undp/domestic/docs/c_Botswana.pdf">http://www.chr.up.ac.za/undp/domestic/docs/c_Botswana.pdf</a></li> <li>2. Government of Botswana. 1955. Acquisition of Property Act Chapter 32:10. Available at: <a href="http://faolex.fao.org/docs/pdf/bot91353.pdf">http://faolex.fao.org/docs/pdf/bot91353.pdf</a></li> <li>3. Government of Botswana. 1968. Tribal Land Act Chapter 32:02 (Amended 1994). Available at: <a href="http://faolex.fao.org/docs/pdf/bot39051.pdf">http://faolex.fao.org/docs/pdf/bot39051.pdf</a></li> <li>4. Government of Botswana. 1970. Tribal Land Regulations. Available at: <a href="http://faolex.fao.org/docs/pdf/bot26411.pdf">http://faolex.fao.org/docs/pdf/bot26411.pdf</a></li> <li>5. Government of Botswana. 1962. Acquisition of Property (Board of Assessment) Rules. Available at: <a href="http://faolex.fao.org/docs/pdf/bot91354.pdf">http://faolex.fao.org/docs/pdf/bot91354.pdf</a></li> <li>6. Government of Botswana. 1987. Chieftainship Act Chapter 41:01. Available at: <a href="http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/84990/94900/">http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/84990/94900/</a></li> </ol>
<b>Burkina Faso</b>	<ol style="list-style-type: none"> <li>1. Government of Burkina Faso. 1991. Constitution of Burkina Faso (Amended 2012). Available at: <a href="https://www.constituteproject.org/constitution/Burkina_Faso_2012.pdf?lang=en">https://www.constituteproject.org/constitution/Burkina_Faso_2012.pdf?lang=en</a></li> <li>2. Government of Burkina Faso. Law 034-2012/AN Agrarian Reform Law. Available at: <a href="http://faolex.fao.org/docs/pdf/bkf139639.pdf">http://faolex.fao.org/docs/pdf/bkf139639.pdf</a></li> <li>3. Government of Burkina Faso. 2009. Law 034-2009/AN on Rural Land Tenure. Available at: <a href="http://faolex.fao.org/docs/texts/bkf95496.doc">http://faolex.fao.org/docs/texts/bkf95496.doc</a></li> </ol>
<b>Cambodia</b>	<ol style="list-style-type: none"> <li>1. Government of Cambodia. 1993. Constitution of Cambodia. Available at: <a href="http://cambodia.ohchr.org/klc_pages/KLC_files/section_001/section_01_01_ENG.pdf">http://cambodia.ohchr.org/klc_pages/KLC_files/section_001/section_01_01_ENG.pdf</a></li> <li>2. Government of Cambodia. 2012. Law on Expropriation. Available at: <a href="http://portal.mrcmekong.org/assets/documents/Cambodian-Law/-Law-on-Expropriation-(2010).pdf">http://portal.mrcmekong.org/assets/documents/Cambodian-Law/-Law-on-Expropriation-(2010).pdf</a> (Unofficial Translation).</li> <li>3. Government of Cambodia. 2001. Land Law of 2001. Available at: <a href="http://faolex.fao.org/docs/texts/cam27478.doc">http://faolex.fao.org/docs/texts/cam27478.doc</a></li> <li>4. Government of Cambodia. 2009. Sub Decree on Procedures of Registration of Land of Indigenous Communities of 2009. Available at: <a href="http://theredddesk.org/countries/laws/sub-decree-procedures-registration-land-indigenous-communities-cambodia">http://theredddesk.org/countries/laws/sub-decree-procedures-registration-land-indigenous-communities-cambodia</a></li> </ol>

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<b>Ethiopia</b>	<ol style="list-style-type: none"> <li>5. Government of Ethiopia. 1994. Constitution of Ethiopia. Available at: <a href="http://www.africa.upenn.edu/Hornet/Ethiopian_Constitution.html">http://www.africa.upenn.edu/Hornet/Ethiopian_Constitution.html</a></li> <li>6. Government of Ethiopia. 2005. Expropriation of Landholdings for Public Purposes and Payment of Compensation Proclamation. Available at: <a href="http://faolex.fao.org/docs/pdf/eth135247.pdf">http://faolex.fao.org/docs/pdf/eth135247.pdf</a></li> <li>7. Government of Ethiopia. 1960. Civil Code of Ethiopia. Available at: <a href="https://www1.umn.edu/humanrts/research/Civil%20Code%20(English).pdf">https://www1.umn.edu/humanrts/research/Civil%20Code%20(English).pdf</a></li> </ol>
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<b>India</b>	<ol style="list-style-type: none"> <li>1. Government of India. 2007. Constitution of India. Available at: <a href="https://india.gov.in/my-government/constitution-india/constitution-india-full-text">https://india.gov.in/my-government/constitution-india/constitution-india-full-text</a></li> <li>2. Government of India. 2013. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act. Available at: <a href="http://indiacode.nic.in/acts-in-pdf/302013.pdf">http://indiacode.nic.in/acts-in-pdf/302013.pdf</a></li> <li>3. Government of India. 2006. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act. Available at: <a href="http://angul.nic.in/tribal-act.pdf/">http://angul.nic.in/tribal-act.pdf/</a></li> <li>4. Supreme Court of India. 2015. Savitri Dev v. State of Uttar Pradesh. Civil Appeal No. 4506 of 2015. Available at: <a href="http://supremecourtindia.nic.in/FileServer/2015-05-19_1432033960.pdf">http://supremecourtindia.nic.in/FileServer/2015-05-19_1432033960.pdf</a></li> </ol>
<b>Indonesia</b>	<ol style="list-style-type: none"> <li>1. Government of Indonesia. 1945. Constitution of Indonesia. Available at: <a href="http://www.ilo.org/wcmsp5/groups/public/-ed_protect/-protrav/-ilo_aids/documents/legaldocument/wcms_174556.pdf">http://www.ilo.org/wcmsp5/groups/public/-ed_protect/-protrav/-ilo_aids/documents/legaldocument/wcms_174556.pdf</a></li> <li>2. Government of Indonesia. Acquisition of Land for Development in the Public Interest (Law No. 2 of 2012). Available at: <a href="http://faolex.fao.org/docs/pdf/ins142768.pdf">http://faolex.fao.org/docs/pdf/ins142768.pdf</a></li> <li>3. Government of Indonesia. 1999. Act. 41 of 1999 on Forestry Affairs. Available at: <a href="http://faolex.fao.org/docs/pdf/ins36649.pdf">http://faolex.fao.org/docs/pdf/ins36649.pdf</a></li> <li>4. Government of Indonesia. 1960. Basic Agrarian Act. Available at: <a href="http://faolex.fao.org/docs/pdf/ins3920.pdf">http://faolex.fao.org/docs/pdf/ins3920.pdf</a></li> <li>5. Government of Indonesia. 2012. Constitutional Court Decision, PUTUSAN – Nomor 35/ PUU-X/2012. Available at: <a href="http://www.mahkamahkonstitusi.go.id/putusan/putusan_sidang_35%20PUU%202012-Kehutanan-telah%20ucap%2016%20Mei%202013.pdf">http://www.mahkamahkonstitusi.go.id/putusan/putusan_sidang_35%20PUU%202012-Kehutanan-telah%20ucap%2016%20Mei%202013.pdf</a></li> </ol>

<b>Kazakhstan</b>	<ol style="list-style-type: none"> <li>1. Government of Kazakhstan. 1995. Constitution of Kazakhstan. Available at: <a href="http://www.parlam.kz/en/constitution">http://www.parlam.kz/en/constitution</a></li> <li>2. Government of Kazakhstan. 2003. Land Code of the Republic of Kazakhstan. Available at: <a href="http://faolex.fao.org/docs/texts/kaz43145.doc">http://faolex.fao.org/docs/texts/kaz43145.doc</a></li> <li>3. Government of Kazakhstan. 2011. Law on State-Owned Property (No. 413-IV ZRK). Available at: <a href="http://cis-legislation.com/document.fwx?rgn=32885">http://cis-legislation.com/document.fwx?rgn=32885</a></li> <li>4. Government of Kazakhstan. 1994. Civil Code. Available at: <a href="http://www.wipo.int/wipolex/en/text.jsp?file_id=200699">http://www.wipo.int/wipolex/en/text.jsp?file_id=200699</a></li> </ol>
<b>Kenya</b>	<ol style="list-style-type: none"> <li>1. Government of Kenya. 2010. Constitution of Kenya. Available at: <a href="https://www.kenyaembassy.com/pdfs/the%20constitution%20of%20kenya.pdf">https://www.kenyaembassy.com/pdfs/the%20constitution%20of%20kenya.pdf</a></li> <li>2. Government of Kenya. 2012. Land Act. Available at: <a href="http://faolex.fao.org/docs/pdf/ken112131.pdf">http://faolex.fao.org/docs/pdf/ken112131.pdf</a></li> <li>3. Government of Kenya. 2010. Land Acquisition Act (Repealed by Land Act 2012). Available at: <a href="http://faolex.fao.org/docs/pdf/ken18461.pdf">http://faolex.fao.org/docs/pdf/ken18461.pdf</a></li> <li>4. Government of Kenya. 2012. National Land Commission Act (No. 5 of 2012). Available at: <a href="http://faolex.fao.org/docs/pdf/ken112132.pdf">http://faolex.fao.org/docs/pdf/ken112132.pdf</a></li> </ol>
<b>Liberia</b>	<ol style="list-style-type: none"> <li>5. Government of Liberia. 1984. Constitution of Liberia. Available at: <a href="https://www.kenyaembassy.com/pdfs/the%20constitution%20of%20kenya.pdf">https://www.kenyaembassy.com/pdfs/the%20constitution%20of%20kenya.pdf</a></li> <li>6. Government of Liberia. Draft Land Rights Act 2013 (pending). Available at: <a href="http://www.sdiliberia.org/sites/default/files/publications/Land%20Rights%20Act_full%20draft.pdf">http://www.sdiliberia.org/sites/default/files/publications/Land%20Rights%20Act_full%20draft.pdf</a></li> </ol>
<b>Malaysia</b>	<ol style="list-style-type: none"> <li>1. Government of Malaysia. 1974. Federal Constitution. Available at: <a href="http://www.wipo.int/edocs/lexdocs/laws/en/my/my063en.pdf">http://www.wipo.int/edocs/lexdocs/laws/en/my/my063en.pdf</a></li> <li>2. Government of Malaysia. 1960. Land Acquisition Act (Amended 1992). Available at: <a href="http://faolex.fao.org/docs/pdf/mal33384.pdf">http://faolex.fao.org/docs/pdf/mal33384.pdf</a></li> <li>3. Government of Malaysia. 2008. National Land Code 1965 (Amended 2008). Available at: <a href="http://faolex.fao.org/docs/texts/mal91850.doc">http://faolex.fao.org/docs/texts/mal91850.doc</a></li> <li>4. Government of Malaysia. 1956. Land Development Act, 1956. Available at: <a href="http://faolex.fao.org/docs/pdf/mal33393.pdf">http://faolex.fao.org/docs/pdf/mal33393.pdf</a></li> </ol>
<b>Mongolia</b>	<ol style="list-style-type: none"> <li>1. Government of Mongolia. 1992. Constitution of Mongolia. Available at: <a href="http://www.servat.unibe.ch/icl/mg00000_.html">http://www.servat.unibe.ch/icl/mg00000_.html</a></li> <li>2. Government of Mongolia. 2002. Law on Allocation of Land to Mongolian Citizens for Ownership. Available at: <a href="http://faolex.fao.org/docs/pdf/mon42187.pdf">http://faolex.fao.org/docs/pdf/mon42187.pdf</a></li> <li>3. Government of Mongolia. 2002. Law on Land. Available at: <a href="http://faolex.fao.org/docs/texts/mon62064.doc">http://faolex.fao.org/docs/texts/mon62064.doc</a></li> </ol>
<b>Namibia</b>	<ol style="list-style-type: none"> <li>1. Government of Namibia. 1990. Constitution of the Republic of Namibia. Available at: <a href="http://www.icla.up.ac.za/images/constitutions/namibia_constitution.pdf">http://www.icla.up.ac.za/images/constitutions/namibia_constitution.pdf</a></li> <li>2. Government of Namibia. Communal Land Reform Act 2002 (Amended 2013). Available at: <a href="http://faolex.fao.org/docs/pdf/nam137197.pdf">http://faolex.fao.org/docs/pdf/nam137197.pdf</a></li> <li>3. Government of Namibia. Agricultural (Commercial) Land Reform Act 6 of 1995 (Amended 2013). Available at: <a href="http://faolex.fao.org/docs/pdf/nam137198.pdf">http://faolex.fao.org/docs/pdf/nam137198.pdf</a></li> </ol>
<b>Nigeria</b>	<ol style="list-style-type: none"> <li>1. Government of Nigeria. 1999. Constitution of Nigeria. Available at: <a href="http://www.worldstatesmen.org/nigeria_const1960.pdf">http://www.worldstatesmen.org/nigeria_const1960.pdf</a></li> <li>2. Government of Nigeria. 1978. Land Use Act. Available at: <a href="http://faolex.fao.org/docs/texts/nig67625.doc">http://faolex.fao.org/docs/texts/nig67625.doc</a></li> </ol>

<b>Philippines</b>	<ol style="list-style-type: none"> <li>1. Government of Philippines. 1987. Constitution of Philippines. Available at: <a href="http://www.gov.ph/constitutions/1987-constitution/">http://www.gov.ph/constitutions/1987-constitution/</a></li> <li>2. Government of Philippines. 1997. The Indigenous Peoples' Rights Act of 1997. Available at: <a href="http://www.gov.ph/1997/10/29/republic-act-no-8371/">http://www.gov.ph/1997/10/29/republic-act-no-8371/</a></li> <li>3. Government of Philippines. 2007. Supreme Court Decision G.R. No. 150640. Available at: <a href="http://sc.judiciary.gov.ph/jurisprudence/2007/march2007/150640.htm">http://sc.judiciary.gov.ph/jurisprudence/2007/march2007/150640.htm</a></li> <li>4. Government of Philippines. 2000. An Act to Facilitate the Acquisition of Right-of-Way, Site or Location for National Government Infrastructure Projects and For Other Purpose (Republic Act, No. 8974). Available at: <a href="http://www.lawphil.net/statutes/repacts/ra2000/ra_8974_2000.html">http://www.lawphil.net/statutes/repacts/ra2000/ra_8974_2000.html</a></li> <li>5. Government of Philippines. 1988. Comprehensive Agrarian Reform Law of 1988 (Amended 2009). Available at: <a href="http://faolex.fao.org/docs/html/phi3886.htm">http://faolex.fao.org/docs/html/phi3886.htm</a></li> </ol>
<b>Rwanda</b>	<ol style="list-style-type: none"> <li>1. Government of Rwanda. 2003. Constitution of Rwanda. Available at: <a href="http://www.rwandahope.com/constitution.pdf">http://www.rwandahope.com/constitution.pdf</a></li> <li>2. Government of Rwanda. 2007. Law No. 18/2007 Relating to Expropriation in the Public Interest (Amended 2015). Available at: <a href="http://faolex.fao.org/docs/pdf/rwa74723.pdf">http://faolex.fao.org/docs/pdf/rwa74723.pdf</a></li> <li>3. Government of Rwanda. 2005. Organic Law No. 08/2005 Determining the Use and Management of Land in Rwanda. Available at: <a href="http://www.lexadin.nl/wlg/legis/nofr/oeur/arch/rwa/ORGANIC_LAW_N.doc">http://www.lexadin.nl/wlg/legis/nofr/oeur/arch/rwa/ORGANIC_LAW_N.doc</a></li> </ol>
<b>South Africa</b>	<ol style="list-style-type: none"> <li>1. Government of South Africa. 1996. Constitution of South Africa. Available at: <a href="http://www.gov.za/documents/constitution-republic-south-africa-1996">http://www.gov.za/documents/constitution-republic-south-africa-1996</a></li> <li>2. Government of South Africa. 1975. Expropriation Act. Available at: <a href="http://faolex.fao.org/docs/pdf/saf123400.pdf">http://faolex.fao.org/docs/pdf/saf123400.pdf</a></li> <li>3. Government of South Africa. Communal Land Rights Act (No. 11 of 2004). Available at: <a href="http://faolex.fao.org/docs/pdf/saf48109.pdf">http://faolex.fao.org/docs/pdf/saf48109.pdf</a></li> <li>4. Government of South Africa. 1996. Interim Protection of Informal Land Rights Act 31 of 1996. Available at: <a href="http://www.ruraldevelopment.gov.za/phocadownload/Acts/interim%20protection%20of%20informal%20land%20rights%20act%2031%20of%201996.pdf5">http://www.ruraldevelopment.gov.za/phocadownload/Acts/interim protection of informal land rights act 31 of 1996.pdf5</a>.</li> <li>5. Government of South Africa. 2000. Promotion of Administrative Justice Act. Available at: <a href="http://www.saflii.org/za/legis/num_act/poaja2000396.pdf">http://www.saflii.org/za/legis/num_act/poaja2000396.pdf</a></li> <li>6. Government of South Africa. 2013. Constitutional Court Decision. Agri South Africa v. Minister of Minerals and Energy (CCT 51/12). Available at: <a href="http://www.saflii.org/za/cases/ZACC/2013/9.html">http://www.saflii.org/za/cases/ZACC/2013/9.html</a></li> <li>7. Government of South Africa. 1996. Communal Property Associations Act. Available at: <a href="http://faolex.fao.org/docs/html/saf18746.htm">http://faolex.fao.org/docs/html/saf18746.htm</a></li> </ol>
<b>South Sudan</b>	<ol style="list-style-type: none"> <li>1. Government of South Sudan. 2011. Transitional Constitution. Available at: <a href="https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/90704/116697/F762589088/SSD90704%202011C.pdf">https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/90704/116697/F762589088/SSD90704%202011C.pdf</a></li> <li>2. Government of South Sudan. 2009. Land Act. Available at: <a href="http://www.globalprotectioncluster.org/_assets/files/field_protection_clusters/South_Sudan/files/HLP%20AoR/South_Sudan_Land_Act_2009_EN.pdf">http://www.globalprotectioncluster.org/_assets/files/field_protection_clusters/South_Sudan/files/HLP%20AoR/South_Sudan_Land_Act_2009_EN.pdf</a></li> </ol>
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24. International Covenant on Economic, Social and Cultural Rights, Art. 11.
25. Interlaken Group and RRI (2015); Wehrmann et al. (2012).
26. FAO (2012): section 1.1.
27. FAO (2012): section 1.1.
28. Alden Wily (2013).
29. Of the 30 countries assessed, 10 countries have common law legal systems, 11 countries have civil law legal systems, and 9 countries have pluralistic legal systems (following both common law and civil law).
30. Although the focus of this paper is on the tenure rights of communities in rural areas, WRI India is publishing a report this year on land acquisition procedures in India's urban areas (Mathews et al. (2016)).
31. Interlaken Group and RRI (2015); USAID (2015); Bledsoe et al. (2015).
32. World Bank (2015).
33. World Bank (2015): 23.
34. The Draft Framework states "The Bank will consider the use of all, or part, of the Borrower's existing environmental and social framework relevant to the development and implementation of the project (the Borrower's ES Framework). The use of Borrower's ES Framework will be determined at the discretion of the Bank. Where the Bank has agreed to consider such use, the Bank will review the Borrower's ES Framework to assess whether such use would enable the project to achieve objectives materially consistent with the ESSs. World Bank (2015), para. 24: 15.
35. World Bank (2015), para 35: 17.
36. In parts of Africa and other regions where all land is legally owned "or held in trust for the people" by the government, governments are not always required to follow expropriation procedures when infringing on land and resource rights. Governments can often designate, convert, lease, allocate, grant concessions to, or otherwise alienate the land without following expropriation procedures. In some countries, the legal question of whether expropriation procedures apply is complex, and can only be answered on a case-by-case basis. Additionally, town and country planning acts and zoning regulations that apply to urban areas often infringe on tenure rights and cause forced evictions (e.g., when condemned buildings are demolished). However, these procedures do not always need to align with expropriation procedures because they operate under a separate set of laws and regulations. Finally, this paper does not address legal mechanisms by which land is voluntarily transferred (i.e., when a landholder voluntarily sells or leases his or her land to the government or private companies).
37. FAO (2008): section 2.14.
38. FAO (2008): section 2.13.
39. Vhugen and Gebru (2013); Davison (2012).
40. Vhugen and Gebru (2013); Davison (2012).
41. IDE-Jetro (2011); Sharma (2011); Supreme Court of India (2015).
42. IDE-Jetro (2011); Sharma (2011); Supreme Court of India (2015).
43. Yardley (2004).
44. Yardley (2004).
45. Ntsebeza (undated).
46. *Kelo v. City of New London*, 545 U.S. 469 (2005); Somin (2007).
47. These four countries have relatively newer expropriation laws (Cambodia, India, and Indonesia enacted expropriation laws within the last five years, and Mongolia's law was enacted in 2002) compared to the other countries assessed, which suggests that there may be a growing trend of clearly defining "public purpose" in expropriation laws.
48. Afghanistan, Burkina Faso, China, Kazakhstan, Kenya, Rwanda, South Sudan, Taiwan, Thailand, Vietnam.
49. FAO (2008): section 2.15.
50. Liberia, Namibia, Nigeria, Philippines, South Africa, and Zimbabwe do not clearly define what constitutes a "public purpose".

51. Bangladesh, Botswana, Ethiopia, Ghana, Hong Kong, Malaysia, Sri Lanka, Tanzania, Uganda, and Zambia have laws that grant executive bodies broad discretion to establish a public purpose justification for the expropriation of land.
52. Section 3, Land Acquisition Act, 1970.
53. Mostert (2007).
54. Government of the United States, 2005.
55. Government of the United States, 2005.
56. Government of Sri Lanka, 2007.
57. Government of Sri Lanka, 1950.
58. FAO (2008): section 2.14.
59. The State Lands Act, 1962 does not explicitly require the government to minimize the amount of land acquired through expropriation.
60. Larbi et al. (2004): 124.
61. FAO (2008): box 5.
62. Bangladesh's Acquisition and Requisition of Immovable Property Ordinance, 1982 provides that once an acquisition project ends, the land is transferred back to the Deputy Commissioner. The Deputy "may restore it to the person from whom was requisitioned the property, or his successor-in-interest, or to such other person as may appear but is not to the Deputy Commissioner to be entitled" but obligated to grant reacquisition rights (section 24).
63. Atahar (2013): 313.
64. Taiwan's Indigenous Peoples Basic Law of 2005, Philippines' Indigenous People's Rights Act of 1997, and India's LARR Act of 2013 establish consent requirements that protect vulnerable groups and areas of cultural significance. Government of India, (2013) section 31; Government of Philippines (1997): section 7(c); Government of Taiwan (2005): Art. 21
65. Afghanistan, Bangladesh, Rwanda, South Sudan, Tanzania, and Zimbabwe.
66. For example, Sections 66–71 of South Sudan's Land Act (2009) establish special legal protections for pastoral lands and communal grazing land, and community lands designated for environmental restoration, but it is unclear whether these areas are given special legal protection when the government decides to expropriate. For this reason, South Sudan received a "partial" score for indicators 3 and 4.
67. Green "yes:" Cambodia, Ethiopia, Ghana, Kenya, Liberia, Thailand, Zimbabwe. Yellow "partial:" Bangladesh, China, India, Philippines, Sri Lanka, Taiwan.
68. Countries that received green "yes" answers to indicator 5 have laws that grant reacquisition rights whenever a proposed acquisition project is abandoned (7 countries). In 6 of the countries, reacquisition rights may be granted, but only under some circumstances. For example, Bangladesh's Acquisition and Requisition of Immovable Property Ordinance, 1982 provides that the Deputy Commissioner may restore requisitioned property to the person from whom the property was expropriated (section 24).
69. FAO (2008): sections 3.7–3.9.
70. FAO (2008): section 3.2.
71. Government of Indonesia (2012): Art. 28(2).
72. Burkina Faso, Cambodia, India, Indonesia, Liberia, Mongolia, Rwanda, South Africa, South Sudan, Tanzania, Thailand, Vietnam, and Zimbabwe.
73. Government of China (2011): Art. 10.
74. Burkina Faso, Cambodia, China, India, Indonesia, Rwanda, Tanzania, Vietnam.
75. South Sudan's Land Act (2009), for example, establishes that a public hearing "may" be carried out for public purposes for large scale development. Government of South Sudan (2009): section 74(2).
76. United Nations (2013a): 4.
77. United Nations (2013a): 4.
78. Alden Wily (2011).
79. RRI (2015).
80. Byamugisha (2013).
81. Oxfam International, International Land Coalition, Rights and Resources Initiative (2016).
82. Alden Wily et al. (2016).
83. Vhugen and Gebru (2013).
84. Hanstad (1998).
85. Times of India (2013).
86. Afghanistan, Botswana, Burkina Faso, Ethiopia, Ghana, Indonesia, Kenya, Malaysia, Philippines, Rwanda, South Sudan, South Africa, Taiwan, Tanzania, Uganda, Vietnam, Zambia, and Zimbabwe.
87. India's LARR Act 2013 provides compensation for customarily held forest land, but not other types of commons (section 3). Government of India (2013). Cambodia's Law on Expropriation limits compensation to "owners or rightful owners" (but not other tenure holders) (Art. 22) and the Land Law (2001) recognizes the rights of indigenous communities to cultivated and shifting cultivated lands (Art. 25). Government of Cambodia (2012, 2001).
88. Bangladesh, China, Hong Kong, Kazakhstan, Liberia, Mongolia, Sri Lanka, Thailand.
89. Alden Wily et al. (2016).
90. Burkina Faso, India, Indonesia, Philippines, South Africa, South Sudan, Taiwan, Tanzania, Thailand, Uganda, and Zambia.
91. Government of Zambia (1970): section 15(3).
92. Government of Zambia (1970): section 15(3).
93. Lindsay (2012).
94. FAO (2008): 23.
95. FAO (2008).
96. Lindsay (2012).
97. Patnaik and Pradhan (2013).
98. FAO (2008): sections 4.37, 4.46.
99. United Nations (2013b).
100. Rose et al. (2016).

101. United Nations (2007).
102. ILO (1989). Article 5 of International Labour Organization Convention 169 states, “the social, cultural, religious and spiritual values and practices of [Indigenous and tribal peoples] shall be recognized and protected.”
103. IFC (2012a).
104. FAO (2008): box 7.
105. Bangladesh’s Acquisition and Requisition of Immovable Property Ordinance, 1982 does not explicitly provide alternative land as an optional payment of compensation.
106. Atahar (2013): 313.
107. Section 3(m) of the LARR Act 2013 provides that “widows, divorcees, and women deserted by families shall be considered separate [affected] families” for purposes of compensation. This legal provision justified a score of “partial” for indicator 12 because it does not necessarily address all of the gender issues associated with compensation. Government of India (2013).
108. Bangladesh, Botswana, Cambodia, Hong Kong, India, Indonesia, Kazakhstan, Kenya, Malaysia, Rwanda, South Africa, Sri Lanka, Tanzania, Thailand, and Vietnam.
109. Burkina Faso, China, Ethiopia, Ghana, Mongolia, Namibia, Philippines, South Sudan, Taiwan, Uganda, and Zimbabwe.
110. Afghanistan, Liberia, Nigeria, Zambia.
111. Afghanistan, Ethiopia, India, Indonesia, Kenya, Mongolia, Nigeria, Philippines, Rwanda, South Africa, South Sudan, Taiwan, Tanzania, Vietnam, Zambia, and Zimbabwe.
112. Botswana, China, Ghana, Hong Kong, Kazakhstan, Malaysia, Namibia, Thailand, Uganda.
113. Land Acquisition Act, 1960, First Schedule 1(3)(a).
114. Government of Philippines (1997): section 71.
115. Ghana, India, Sri Lanka, Taiwan, Tanzania, Vietnam.
116. Ghana’s Constitution, for example, imposes an obligation on the government to resettle “displaced inhabitants on suitable alternative land with due regard for their economic wellbeing and social and cultural values.” Because it is unclear what “due regard” means and there is no implementing legislation that establishes a process for ensuring that cultural values are accounted for, Ghana received a yellow “partial.” Government of Ghana (1992): Art. 20(3).
117. Afghanistan, Cambodia, Ethiopia, Ghana, India, Indonesia, Kazakhstan, Kenya, Mongolia, Nigeria, Philippines, Rwanda, South Sudan, Sri Lanka, Tanzania, Vietnam, Zambia.
118. FAO (2008): Section 4.9.
119. FAO (2008): Section 4.9.
120. In Rwanda, compensation must be paid within 120 days of the approval of the valuation (see Rose et al. (2016)).
121. The 1962 State Lands Act does not explicitly impose a deadline for the payment of compensation.
122. Larbi et al. (2004).
123. Larbi et al. (2004).
124. The 2011 Regulation on the Expropriation of Buildings on State-owned Land and Compensation and the 1998 Land Administration Law do not explicitly establish a deadline for the payment of compensation.
125. Keliang (2007).
126. Deininger et al. (2012).
127. Deininger et al. (2012).
128. FAO (2008): section 4.5.
129. Ethiopia’s Expropriation Proclamation No. 455/2005 does not explicitly provide affected populations with the right to negotiate compensation amounts.
130. Alemu (2013): 130.
131. FAO (2008): section 5.10.
132. Afghanistan, Bangladesh, Botswana, Ethiopia, Hong Kong, Indonesia, Kazakhstan, Kenya, Philippines, Rwanda, Sri Lanka, Taiwan, Thailand, Uganda, Vietnam, Zimbabwe.
133. India, Malaysia, Mongolia, Namibia, South Africa, South Sudan, Tanzania.
134. For example, under India’s LARR Act 2013, compensation must be paid within three months of the date on which possession of the expropriated land is taken. However, in cases of urgency, the Collector needs to pay only 80 percent of the compensation amount and can bypass certain compensation requirements. Government of India (2013): Section 40.
135. Burkina Faso, Cambodia, China, Ghana, Liberia, Nigeria, Zambia.
136. Afghanistan, Botswana, Burkina Faso, Cambodia, China, Ghana, Hong Kong, India, Indonesia, Kazakhstan, Kenya, Malaysia, Mongolia, Rwanda, South Africa, Sri Lanka, South Sudan, Tanzania, Uganda, Vietnam, Zambia.
137. Bangladesh, Ethiopia, Liberia, Nigeria, Taiwan, Thailand, Zimbabwe.
138. World Bank (2001): O.P. 4.12; Larsen and Ballasteros (2014).
139. IFC (2012b).
140. Cernea (2004).
141. Alemu (2013): 103.
142. Alemu (2013): 103.
143. Atahar (2013): 312.
144. Hemadri et al. (1999).
145. United Nations (1948): art. 17.
146. International Covenant on Economic, Social and Cultural Rights, Art. 11
147. United Nations (2014).
148. World Bank (2001), O.P. 4.12 on Involuntary Resettlement, section 2.
149. Botswana, China, Ethiopia, India, Indonesia, Taiwan, Tanzania, Vietnam.
150. Government of South Sudan (2009): section 72(3).
151. The distinction between indicator 21 and indicator 16 (on alternative land as a form of compensation) is that indicator 21 focuses on whether all displaced persons are guaranteed alternative land when they are

forced off their land. Indicator 16 asks only whether alternative land is an option for payment of compensation. Since expropriations can often result in the displacement of landholders who are not entitled to compensation, such as informal occupants or unregistered customary landholders, it is important also to examine whether there are adequate procedures for resettling these landholders on alternative land.

152. India's law, for example, provides that, for irrigation projects, "as far as possible in lieu of compensation" affected families owning agricultural land in the affected area who lose land or have become marginal farmers or landless, shall be allotted a minimum of one acre of land in the command area of the acquisition projects. Scheduled Castes and Tribes must be provided equivalent land or two and a half acres, whichever is lower. Because this right is limited to irrigation projects and there is a limit on the number of productive acres granted, India received a "partial" score. Government of India (2013): Provision 2 of the Second Schedule.
153. South Sudan's Land Act, for example, grants displaced persons the right to participate in the planning and implementing of resettlement programs. Government of South Sudan (2009): section 72(2).
154. Philippines' IPRA Act 1997 provides that Indigenous Cultural Communities and Indigenous Peoples shall not be relocated without their written consent. However, because non-indigenous landholders are not granted a similar right, Philippines received a "partial" for indicator 24. Government of Philippines (1997): section 7(b)–(c).
155. According to the LARR Act 2013, an Expert Group must appraise the Social Impact Assessment and report on whether "land proposed to be acquired is the absolute bare-minimum extent needed for the project and whether there are no other less displacing options available" (section 7(5)). Section 8(2) requires the Government to examine the report of the Collector on Expert Group on Social Impact Assessment and, after considering the report, recommend such area for acquisition as would ensure minimum displacement of people, minimum disturbance, and minimum adverse impact on the individuals affected. Section 39 provides that the Collector must "as far as possible, not displace any family which has already been displaced by the appropriate Government, and, if so, shall pay additional compensation..." Government of India (2013).
156. Article 32 of Taiwan's Indigenous Peoples Basic Law and Section 7(c) of the Philippine's IPRA Act requires the government to minimize or avoid evictions from lands held by Indigenous Peoples, but there are no such requirements for non-indigenous lands (Philippines and Taiwan received a yellow "partial"). Government of Philippines, 1997; Government of Taiwan, 2005.
157. Hoops (2015).



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